Calendar No. 13

99th Congress *1st Session*	SENATE	Report 99-11

SUPERFUND IMPROVEMENT ACT OF 1985

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 51

together with

ADDITIONAL AND MINORITY VIEWS

March 18 (legislative day, February 18), 1985.—Ordered to be printed

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CONTENTS

Page
General Statement ... 1

Summary and Discussion:

Title I:

Sec. 101—Indian Tribes ... 4
Sec. 102—Community Relocation ... 6
Sec. 103—Offsite Remedial Action ... 7
Sec. 104—Alternative Water Supplies ... 7
Sec. 105—Improvements in Notification and Penalties ... 8
Sec. 106—Hazardous Substances Inventory ... 9
Sec. 107—Scope of Program ... 15
Sec. 108—Statutory Limits on Removal ... 17
Sec. 109—State Credit ... 18
Sec. 110—Funding of Remedial Action of Facility ... 18
Sec. 111—Selection of Remedial Actions ... 19
Sec. 112—State and Federal Contributions to Operation and Maintenance ... 20
Sec. 113—Siting of Hazardous Waste Facilities ... 21
Sec. 114—Cooperative Agreements ... 24
Sec. 115—Access and Information Gathering ... 25
Sec. 116—Health-Related Authorities ... 26
Sec. 117—Public Participation ... 37
Sec. 118—Love Canal Acquisition ... 38
Sec. 119—Administrative Orders for Section 104(B) Actions ... 39
Sec. 120—National Contingency Plan (Hazardous Ranking System) ... 39
Sec. 121—National Contingency Plan ... 41
Sec. 122—Foreign Vessels ... 41
Sec. 123—State and Local Government Liability ... 42
Sec. 124—Contractor Indemnification ... 42
Sec. 125—Natural Resource Damage Claims ... 43
Sec. 126—Contribution and Parties to Litigation ... 43
Sec. 127—Federal Lien ... 45
Sec. 128—Direct Action ... 46
Sec. 129—Victim Assistance ... 48
Sec. 130—Fund Use Outside Federal Property Boundaries ... 54
Sec. 131—Statute of Limitations ... 54
Sec. 132—Judicial Review ... 55
Sec. 133—Pre-Enforcement Review ... 57
Sec. 134—Nationwide Service of Process ... 59
Sec. 135—Preemption ... 59
Sec. 136—Federal Facilities Concurrence ... 60
Sec. 137—Federal Facilities Compliance ... 60
Sec. 138—Citizens Suit ... 61
Sec. 139—Administrative Conference Recommendation ... 64
Sec. 140—Authorization of Appropriations ... 68

Title II:

Animal Feed Exemption ... 69
Hearings ... 69
Rollcall votes ... 69
Evaluation of regulatory impact ... 69
Cost of legislation ... 70

Additional views of:

Senator Lautenberg ... 73
Senator Simpson ... 75
Minority views of Senator Symms ... 77
Changes in existing law ... 78

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99TH CONGRESS
1st Session

SENATE

REPORT
99-11

SUPERFUND IMPROVEMENT ACT OF 1985

MARCH 18 (legislative day, FEBRUARY 18), 1985.—Ordered to be printed

Mr. STAFFORD, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 51]

together with

ADDITIONAL AND MINORITY VIEWS

The Committee on Environment and Public Works, to which was referred the bill (S. 51) to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

GENERAL STATEMENT

PURPOSE AND SUMMARY

S. 51, as amended, amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide $7.5 billion in additional funding over a five-year period. Of this $7.5 billion, $1.030 billion is to be derived from general revenue and presumably $6.470 billion from special taxes. Jurisdiction over the amount and nature of the tax lies with the Committee on Finance.

The overriding purpose of S. 51 is to expand and accelerate the Federal Government's program to clean up and otherwise protect the public health and environment from releases of hazardous substances and wastes. To this end, S. 51 not only provides additional money and time, but makes changes in the law which improve the pace and direction of those cleanup efforts. Title I of the bill establishes cleanup standards to be applied so that human health and the environment is protected in every circumstance; a health program to assure that at each Superfund site a thorough review and assessment is made of the threats posed to human health; a chemicals testing program to develop adequate information on frequently encountered hazardous substances; and a grant program to assist States that wish to establish demonstration systems of assistance for victims of hazardous substances and wastes.

BACKGROUND AND NEED

The modern chemicals technology which has contributed so greatly to this Nation's standard of living has also left a legacy of hazardous substances and wastes which pose a serious threat to human health and the environment. By some estimates, there are over 20,000 abandoned hazardous waste sites in the United States. In large areas, drinking water supplies are contaminated by synthetic organic chemicals, including a large number of supplies which rely upon groundwater, a resource generally thought to be safe from contamination. Unfortunately, the Environmental Protection Agency estimates that for groundwater systems serving less than 10,000 persons, one of every six supplies is contaminated by volatile chemicals and nearly one of every three of the larger systems.

It was to deal with such problems that the Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which quickly came to be known as the "Superfund". The law authorized a five-year, $1.6 billion program to clear up releases of hazardous substances, pollutants and contaminants. It also created a new health agency, the Agency for Toxic Substances and Disease Registry, located within the Department of Health and Human Services. The bulk of the clean up program, however, was delegated to the Environmental Protection Agency.

During the four years which have passed since enactment of the Superfund law, public concern has intensified. In some areas and States, public opinion polls show that the public is more concerned over the problem of hazardous substances and wastes than any other domestic issue.

The Enviornmental Protection Agency has now embarked on an aggressive program to clean up 115 Superfund sites per year and estimates that it will be called up to react to up to 200 emergencies annually. The Assistant Administration has testified that a five-year extension of this program would require an additional $5.2 billion. But this estimate fails to take into account other important and substantial demands on the Fund. It does not, for example, allow leeway for the payment of any claims for natural resource damages, one of the law's most important, but still unimplemented, components. The estimate also does not allow any room for increase in the cost of cleanup per site beyond the current estimate, even though the Agency's previous projections have climbed in the past four years from $2.5 million per site to $6.5 million in 1984 and, most recently, $8.3 million. Finally, the estimate assumes that between now and 1990, which is the expiration date of the five-year extension, there will no inflation. Based on this, it seems clear that even a simple extension of the current program will require substantially more than $5.2 billion. With the addition of new responsibilities in this bill (estimated by the Agency to cost $1 to $1.5 billion over 5 years), the Committee concluded that an appropriate five-year funding level was $7.5 billion, as contained in the reported bill.

STATEMENT OF PRINCIPLES

During 1984 Committee consideration of a Superfund extension, it was noted that neither that bill nor the existing law included a statement of principles or goals and objectives, and several Members believed that such a statement would be worthwhile. The existing statute was designed to help address many of the problems faced by our country as a result of toxic chemical contamination. The statute does not and is not intended to replace other laws which provide the regulatory foundations to address a variety of these toxic chemical concerns. The existing statute and this reauthorization are structured to complement these laws. It is intended to provide the authority and resources to clean up hazardous substance releases.

The problem of hazardous substances in the environment is complex. Nonetheless, certain basic principles setting out the elements necessary to address these problems can be identified. These principles are:

First, to provide ample Federal authority for cleaning up releases of hazardous substances, pollutants and contaminants;

Second, to assure that those responsible for any damage, contamination, environmental harm or injury from hazardous substances bear the costs of their actions;

Third, to provide a fund to finance response actions where a responsible party does not clean up, cannot be found or cannot pay. This fund should be based primarily on contributions from those who have been generally associated with such problems in the past and who today profit from products and services associated with such substances; and

Fourth, to provide adequate compensation to those who have suffered economic, health, natural resource, and other damages.

By implementing the preceding principles, the major objective of the statute will be accomplished: to provide an incentive to those who manage hazardous substances or are responsible for contamination sites to avoid releases and to make maximum effort to clean up or mitigate the effects of any such release.

SUMMARY AND DISCUSSION

TITLE I

INDIAN TRIBES

SUMMARY

This section adds a definition of Indian tribes to the definitions contained in section 101 of CERCLA. The section also provides that the requirements for prior assurances from a State that it will pay a share of the costs of remedial action and the costs of future maintenance shall not apply to remedial actions undertaken on Indian lands; and that in such cases the Federal Government, instead of the State, shall assure the availability of acceptable facilities to manage any hazardous substances removed from the site. The bill also authorizes Indian tribes to recover damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances. The amendment also provides that Indian tribes are to be afforded substantially the same treatment as States under certain specific provisions of CERCLA.

DISCUSSION

CERCLA does not now expressly indicate under what terms and conditions the Superfund program applies to Indian lands. Section 101 of the bill would eliminate the resulting uncertainty and ambiguity by specifying how the program operates within Indian lands.

Subsection (a) of the amendment adds to the Act a new definition of Indian tribes specifying that, for the purposes of CERCLA, the Indian tribes to be covered by the provisions of this amendment include any Indian tribe, band, nation, or other organized group or community, including an Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States. The term does not include Alaska Native regional or village corporations, which are organized for other purposes.

Subsection (b) of the amendment limits the requirements of section 104(c)(3) of CERCLA in the case of responses to be performed on Indian lands. That section provides that before remedial action is to be undertaken under the Superfund program, there must be prior assurances from the State that it will pay a share of the remedial costs and future maintenance costs, and will assure the availability of an acceptable facility to manage any hazardous substances which are being removed from the site. The amendment in subsection (b) would provide that the first of these two requirements—for a State cost share—would not apply in the case of remedial action on Indian lands. The Federal government would instead pay all remedial action and maintenance costs from the Fund. The second requirement—for an available facility to manage any hazardous substances removed from the site—would continue to apply if the site is on Indian land, but the Federal government, not the State or the Indian tribe, would be charged with the responsibility of assuring the availability of the facility. These special provisions are justified by the unique trust responsibility which the United States has for Indians.

The amended requirements for remedial action on Indian lands would apply whenever the remedial action is to be taken on land or water held by an Indian tribe; held by the United States in trust for Indians; held by a member of a tribe if the land or water is subject to a trust restriction on alienation (as is the case with allotment lands that are held by a member of a tribe subject to a prohibition against conveyance to anybody other than another tribal member); or otherwise within the borders of an Indian reservation (such as non-Indian land within a reservation).

Subsection (c) of the amendment expressly provides that the Federal Government, upon determining that an Indian tribe has the capability to carry out any or all of the response authority authorized by section 104 of CERCLA may enter into a contract or cooperative agreement with the tribe for that purpose and reimburse the tribe from the Fund for the expenses incurred under that contract or cooperative agreement. Any such contract or cooperative agreement would fall within the scope of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e. (b)), which provides that "Any contract, subcontract, grant, or subgrant pursuant to * * * any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefits of Indians" shall afford maximum opportunities for employment and training of Indians, and shall require a preference for awards to be made to Indian organizations and Indian-owned businesses in any subcontracting under the contract or cooperative agreement.

Subsections (d) and (e) of the amendment provide that Indian tribes may recover damages for injury to, destruction of, or loss of natural resources caused by the release of a hazardous substance. This provision would give an Indian tribe the same rights under sections 107 and 111 of CERCLA (with respect to natural resources belonging to, managed by, controlled by, or appertaining to the tribe; or held in trust for the tribe; or belonging to a member of the tribe if the resources are subject to a trust restriction on alienation, as is the case of allotment lands held by individual tribe members subject to a condition that they not be conveyed to anybody other than another tribal member) as a State has under those sections (with respect to natural resources belonging to, managed by, controlled by, or appertaining to the State). This provision does not extinguish the United States' trust responsibilities with respect to Indian resources, but merely provides that a tribe itself may act to recover damages instead of relying on the United States to do so on its behalf. Accordingly, another amendment on statute of limitation (section 131 of this bill) would provide that the statute of limitations for asserting natural resource damage claims does not start to run against an Indian tribe until the United States either notifies the tribe that it will not seek damages on the tribe's behalf or allows the normal time period for filing such claims to pass without filing on behalf on the tribe.

Subsection (f) of this amendment would add a new section to title I of CERCLA, specifying that Indian tribes are to be afforded substantially the same treatment as a State under certain specified provisions of CERCLA. With regard to the provisions of section 105, an Indian tribe is to be afforded substantially the same treatment as a State with respect to all provisions other than the provision regarding the inclusion of at least one site per State on the national priority list. As a result, a tribe would be able to establish and submit for consideration by the President priorities for remedial action among known and potential releases affecting the tribe in any manner, but would not be assured that at least one such site so proposed by the tribe would be included among the one hundred highest priority sites.

COMMUNITY RELOCATION

SUMMARY

This amendment expands the statutory definition of "removal" in section 101(23) of the CERCLA to provide the President with the discretion to fund as part of removal: permanent relocation of businesses, residences, and community facilities; payment of principal and interest on business debts during a temporary relocation (until temporary relocation ends or until permanent relocation is accomplished); and payment of unemployment compensation to individuals unemployed as a result of an evacuation or a relocation. The amendment authorizes the President to provide permanent relocation as the most appropriate remedy at a site even when the site is not on the National Priorities List. The payment of principal and interest on business debts is limited to those businesses which are located in the area of an evacuation or relocation.

DISCUSSION

The language is added to clarify the Presidents authority and flexibility to deal with situations such as that presented by dioxin contamination in Missouri. Specifically, the amendment provides that the President can move immediately to permanently relocate the residents of a contaminated site if such a step is found to be cost-effective or may be necessary to protect health or welfare. For example, in some cases it may make more sense—economically and socially—to buy up and seal off a highly contaminated residential area immediately, rather than locate the residents and indefinitely in temporary housing during a protracted, possibly impractical cleanup.

The amendment also gave the President the authority to pay the interest and principal on business debt during a period of temporary relocation. Temporary relocation is intended to protect the residents of contaminated area, but when a community is evacuated, businesses are cut off from their customers. Their income abruptly ceases, while their obligations continue unabated. Thus, they are not protected, but are harmed. This amendment seeks to hold them harmless with respect to business debt only. There is no intent to make up for lost income.

The President also would have specific authority to provide special assistance to individuals unable to work as a result of such an evacuation. In effect, the same assistance would be available as it already available in nature disasters—unemployment and reemployment assistance, food stamps, and grants to meet necessary expenses of serious needs not covered by other aid programs. As under the Disaster Relief Act, this assistance would be provided by Federal agencies with appropriate programs and expertise, using money from the Superfund, and not directly by the Environmental Protection Agency.

This is a clarifying amendment, not substantially altering the scope of intent of CERCLA.

OFFSITE REMEDIAL ACTION

SUMMARY

This section amends section 101(24) of the Act to eliminate an existing bias in favor of on-site disposal as the preferred remedial action. The amendment will allow off-site disposal as part of remedial action with no need for any special findings by the President.

DISCUSSION

Section 101(24) of CERCLA, which defines "remedy or remedial action," provides that additional threshold criteria must be met before the President may undertake *off-site* disposal of hazardous substances. This creates a bias against off-site disposal and reflects past Congressional emphasis on disposal on-site as a preferred remedial action.

The objective of the amendment is to eliminate the statutory bias for on-site remedies by making the statute neutral with regard to on-site or off-site remedies. Off-site treatment and other alternative technologies are often preferable to on-site land disposal.

The primary effect of this amendment will be to reduce the proliferation of sites requiring monitoring in perpetuity (by consolidating wastes from many sites into one larger and closely monitored facility), by recognizing the value of permanent off-site remedies such as treatment.

ALTERNATIVE WATER SUPPLIES

SUMMARY

The reported bill defines the term "alternative water supplies" in new section 101(34) to include, but not be limited to, drinking water and household water supplies

DISCUSSION

The current law authorizes the provision of alternative water suplies in removal and both remedial actions. The Committee was made aware of situations in which this authority has been used to replace drinking water but not household water. This section makes it clear that household water must be replaced when this authority is invoked. The prompt provision of household water supplies should minimize the unfortunate situations in which citizens are bathing, washing clothes, and carrying out household chores with water contaminated by a release under this Act.

The replacement of all water, not just that used for drinking, is important for protection of human health. For many chemicals, especially volatile organics, the major exposure route is not through consumption in drinking water, but inhalation after the volatile liquids enter the household atmosphere due to showering, laundering, cooking, etc. Similarly, for some chemicals skin absorption through contaminated clothing can be a significant exposure route. For these reasons, prudence demands that when drinking water supplies are replaced, household water supplies should be replaced as well.

IMPROVEMENTS IN NOTIFICATION AND PENALTIES

SUMMARY

The reported bill amends section 103 of the Act to require prompt notification of State and local emergency response officials to the release of certain hazardous substances. This requirement applies to any release of a hazardous substance with a reportable quantity established under section 102 of one pound or less, and to releases of any other hazardous substance in quantities exceeding that determined by the President by regulation potentially to require emergency responses.

Section 103(b) of the Act is also amended to increase criminal penalties for failure to report to a maximum fine of $25,000 or imprisonment for up to two years, or both. The penalty for subsequent convictions is a fine of up to $50,000 or imprisonment for up to five years, or both. In addition, the maximum fine for destruction or falsification of records under section 103(d)(2) is increased to $25,000, and the maximum fine for failure to comply with an order under section 106 is increased to $10,000 per day.

The reported bill adds a new subsection (g) to section 103, establishing an administrative civil penalty for failures to provide timely notification under subsections (a) or (b). The penalty is graduated, at not more than $10,000 for the first failure, $25,000 for a second violation by the same person, $50,000 for a third violation, and $75,000 for a fourth or subsequent violation. Such penalties may be assessed by the President after notice and an opportunity for hearing. District court review of the penalty is on the record.

DISCUSSION

Section 103(a) of CERCLA requires any person in charge of a vessel or facility to notify the National Response Center as soon as the person in charge has knowledge of any release of a hazardous substance in an amount that equals or exceeds the reportable quantity established under section 102. These notifications serve as one basis for the Federal Government to determine whether response action is appropriate for the release. One problem that has emerged, however, is that notification of the National Response Center may not be relayed quickly enough back to the State and local authorities who must provide the first line of emergency response. The reported bill corrects that problem by requiring immediate direct notification of State and local emergency response officials for releases of highly toxic substances, and particularly those determined by regulation potentially to require response on an emergency basis. In these emergency situations, every minute may count in taking effective action, and immediate notification of local authorities is essential. Ordinarily, delays in making the required notification should not exceed 15 minutes after the person in charge has knowledge of the release, and "immediate notification" requires shorter delays whenever practicable.

The provision of this notice to many State and local agencies may be a problem, particularly in areas where many jurisdictions may be affected. It would be helpful if local contingency plans or emergency response plans would identify a limited number of local agencies for primary notification. It this were done, notice to such agencies would constitute adequate notice under section 103(a) and (b).

The existing statute provides only criminal penalties for failure to report. This amendment increases the criminal penalty and allows the administrative imposition of civil penalties. Administrative civil penalties for violations of notification requirements have several advantages. For example, civil penalties may be imposed in situations where the violations do not merit the sanctions associated with criminal violations. In addition, the availability of an easily-imposed civil penalty will increase the incentive to comply with the notification requirements. Any administrative hearings conducted pursuant to this section are expected to be informal, i.e., not subject to the requirements of sections 554 or 556 of title 5, United States Code. Penalty actions may be brought at any time after the failure to notify. Use or non-use of the administrative civil penalty in no way affects or limits the President's ability to take action under other provisions.

HAZARDOUS SUBSTANCES INVENTORY

SUMMARY

The reported bill adds subsections (h) and (i) to section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. These subsections require affected facility owners or operators to prepare and distribute an inventory of hazardous substances and their characteristics.

A hazardous substance for the purpose of this subsection is as defined under section 101(14) of CERCLA. A mixture containing 1 percent or more of such a hazardous substance is considered to be a hazardous substance under this subsection. The affected facilities are those that manufacture a hazardous substance or store 6,000 kilograms or more of a hazardous substance, and have ten or more full-time employees.

The inventory is required to be completed and distributed within six months after enactment and at least every two years thereafter. Subsection (h) requires affected facilities to file their Material Safety Data Sheets (MSDS), already required by the Occupational Safety and Health Administration (OSHA), as part of the inventory form. OSHA requires affected firms to indicate through the MSDS the name of the substance, its characteristics, adverse health effects due to exposure, proper emergency procedures and handling precautions. Additionally, this subsection requires affected facility owners or operators to provide data on the use, emissions, discharge, and disposal of each hazardous substance. Current emissions information used to satisfy Federal or State statutory environmental reporting requirements may be used on the inventory, where appropriate.

The facility owner or operator is required to distribute the inventory form to State and local emergency response personnel; the State police, health, and environmental departments; area police and fire departments; area emergency medical services; area hospitals; area libraries; and the President.

The President is required to establish an "800" telephone number that is staffed 24 hours per day to answer questions about the inventory and information it contains. The telephone number must also be computer accessible.

The President, or the President's designee, may verify the data contained in the inventory using the authority of existing section 104(e) of CERCLA. Information submitted on the inventory, except health and safety data, is subject to the provisions of 18 U.S.C. section 1905. The penalty for false or knowing omission of material statements is a maximum fine of $25,000 or imprisonment for not more than one year, or both.

State laws requiring equivalent or different information are explicitly not preempted by this amendment.

The amendment also requires that the list of substances for which the inventory is required be updated every two years by the Director of the National Toxicology Program (NTP), in consultation with other appropriate agencies. The list prepared by the NTP shall be promulgated by the President unless the President demonstrates that the risk posed by a particular chemical is not equal to or greater than the risk posed by hazardous substances already listed.

DISCUSSION

The Hazardous Substances Inventory, required under this section, is designed as an initial and continuing monitor on the movement of hazardous substances, an aid to regulatory efforts under environmental statutes in minimizing releases of such substances, and a method for preparing appropriate response authorities to handle releases of hazardous substances in an effective manner. In this way, both human health and the environment can be better protected. It will remedy a deficiency in the amount and availability of current information concerning the production, use, and disposal of hazardous substances.

This amendment is based on the New Jersey right-to-know legislation, which has an inventory component. The State inventory and distribution of the inventory to the community is widely supported by recipients of the inventory, industry, and the general public. In 1978, before the passage of the New Jersey right-to-know legislation, the New Jersey Department of Environmental Protection conducted an industrial survey. New Jersey's experience with the survey is encouraging; within two months State officials received over 7,000 responses to their inventory form.

This amendment and the notification and penalties amendment to section 103(a) of CERCLA work in concert to upgrade the quality and timeliness of information that is provided to State and local emergency response and medical personnel. Other amendments, consistent with those in the reported bill, may be considered by the Committee as possible floor amendments for the purpose of addressing emergency planning for facilities as well as release prevention, containment, and countermeasures.

While there is broad need for additional information about chemicals in commerce, the inventory requirements of this section apply only to those substances considered to be hazardous under section 101(14) of CERCLA. This definition encompasses substances that are designated as hazardous under the Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act, as well as substances specifically designated under CERCLA.

The list of hazardous substances that is covered by this amendment is intended to be reviewed and modified by the National Toxicology Program, with the consultation of appropriate Federal agencies, every two years. The Administrator is to promulgate this list within six months unless there is a reasonable basis for concluding that the substances added by NTP do not present an equal or greater risk than those substances already listed. In making this determination, it is expected that the Administrator will consider both acute and chronic health effects and environmental effects of the substance in question.

For the purpose of this amendment, a "hazardous substance" includes mixtures that contain one percent or more of such hazardous substances. This mixture rule is similar to that under the Hazard Communication Standard promulgated by OSHA, and is different from the RCRA mixture rule, under which all mixtures containing any amount of a hazardous waste are considered hazardous unless specifically delisted.

This use of the mixture rule in the definition of "hazardous substance" does not extend the coverage of this amendment to finished consumer products such as those that might be found in a retail store, where such products do not present a threat of a release from a facility. This is consistent with the definition of a "facility" contained in existing section 101(9) of CERLCA, and its reference to consumer products.

Not all facilities that have hazardous substances of the premises are covered. The scope of the amendment is restricted to include all manufacturers of a hazardous substance or facilities that store more than 6,000 kilograms of such a substance after the date of enactment. This latter requirement is consistent with permitting requirements under the Hazardous and Solid Waste Amendments of 1984, which allow certain small quantity generators to store not more than 6,000 kilograms of hazardous waste without a permit for up to six months (rather than the general rule of 90 days). A final limitation is that facility owners or operators must have at least ten full-time employees.

The contents of the inventory are based on the New Jersey right-to-know legislation and the Material Safety Data Sheet required by OSHA. The MSDS requires primarily identification of the substance and health and safety data so emergency response and medical personnel can appropriately respond to releases of and exposure to the hazardous substance. Recognizing that this is insufficient to provide a full view of possible exposure pathways, the amendment also requires facility owners and operators to provide data on the emissions, discharges, and disposal of the hazardous substance. The inventory will therefore begin to track substances that may be constituents of future Superfund sites.

The President should use the form that follows as a basis, consistent with this subsection, for the inventory form the President is required to publish within 60 days after enactment. As stated in the amendment, this requirement is exempt from the Paperwork Reduction Act and the Office of Management and Budget Circular A-40 so that this deadline will be met by the President.

Form COM-021 B
Rev. 2/80

State of New Jersey
Department of Environmental Protection

page ____ of ____

PART II

SELECTED SUBSTANCE REPORT

COMPLETE ONE FORM FOR EACH SELECTED SUBSTANCE

FOR DEP USE

Name and Location of Plant	I.D.
Selected Substance Name / CAS #	
Briefly Describe Its Use On The Site:	

	COMPLETE THE FOLLOWING INFORMATION FOR THE PLANT BASED ON 1978 USAGE	ENTER THE ACTUAL OR ESTIMATED AMOUNTS	USE THE REQUESTED UNITS	CHECK ONE ACTUAL	 ESTIMATED
Through-put quant.	4. QUANTITY PRODUCED ON SITE		lbs/yr.		
	5. QUANTITY BROUGHT ONTO SITE		lbs/yr.		
	6. QUANTITY CONSUMED ON SITE		lbs/yr.		
	7. QUANTITY SHIPPED OFF SITE AS (OR IN) PRODUCT		lbs/yr.		
	8. MAXIMUM INVENTORY		lbs		
Air Emissions	9. TOTAL STACK EMISSIONS OF SELECTED SUBSTANCE		lbs/yr.		
			max lbs/day		
	10. TOTAL FUGITIVE EMISSIONS OF SELECTED SUBSTANCE		lbs/yr.		
			max lbs/day		
Wastewater Dis.	11. TOTAL DISCHARGE OF SELECTED SUBSTANCE INTO SURFACE WATER		lbs/yr.		
			max lbs/day		
	12. TOTAL DISCHARGE OF SELECTED SUBSTANCE INTO PUBLICLY OWNED TREATMENT WORKS		lbs/yr.		
			max lbs/day		

13. DISPOSAL OF WASTE CONTAINING THE SELECTED SUBSTANCE

LOCATION OF FINAL DISPOSAL SITE NAME AND ADDRESS	PHYSICAL STATE TABLE A	DISPOSAL METHOD TABLE B	QUANTITY OF SELECTED SUBSTANCE DISPOSED (lbs)	FOR DEP USE

TABLE A
PHYSICAL STATE

A-01 Solid
A-02 Liquid
A-03 Slurry
A-04 Sludge
A-99 Other (specify)

TABLE B
DISPOSAL METHODS

M-01 Composting
M-02 Evaporation
M-03 Holding Tank
M-04 Incineration
M-05 Injection Well
M-06 Lagoon
M-07 Land Burial
M-08 Land Spreading
M-09 Neutralization
M-10 Ocean
M-11 Recycling
M-12 Sanitary Landfill
M-13 Surface Water
M-14 Subsurface System
M-15 Pyrolysis
M-16 Spray Irrigation
M-17 Stored On Site
M-99 Other (specify)

BEST AVAILABLE COPY

In compiling this information, the amendment states that emissions reporting information used to satisfy Federal and State environmental laws may also be used on the inventory, where appropriate. This means that such person would not have to undertake a new waste monitoring program, for example, provided data collected for other purposes are accurate. However, it is also important to assure uniformity within the database when inventory reports from various persons are combined. Therefore, the President may require persos submitting inventory forms to convert existing data to common units for the purpose of reporting under this subsection.

In order to facilitate consistency in reporting, facility owners and operators submitting inventories should state the method relied upon for their emissions calculations, if the original data was in quantities different from those required under the hazardous substances inventory. The President may wish to promote further standardization and reliability be developing methods, or including methods from other programs, when publishing the inventory form for calculating or estimating emissions. These can be used by affected facility owners and operators so units are calculated or estimated by reliance on the same methodology.

Additionally, estimates may be used where the information is not otherwise reasonably ascertainable. Information is reasonably ascertainable under this subsection where it is generally known to others similarly situated or is capable of being obtained at reasonable cost. Thus, in situations where owners or operators of similarly sized facilities generally know what their hazardous substances emissions are, all other facilities in the same category should provide similar information.

The inventory is to be distributed by the facility owner or operator to State and local entities specified in the amendment and the President and to the public upon request. The purpose of this distribution is to provide adequate and timely circulation of the inventory so those who might be affected by a release would have access to relevant data concerning the hazardous substance. Several witnesses testified as to the difficulties which confront emergency response personnel when they are called upon to respond to the release of a substance with unknown characteristics and dangers. Access to the information contained on the inventory should diminish this problem. In addition, the amendment creates a mechanism for providing basic information about hazardous substances, their releases to the environment, and potential health effects to the general public. In a report to the Committee, the Congressional Research Service estimated that 96 million persons live in proximity to facilities manufacturing chemicals.

In order to meet the goals of making the inventory available widely and in a timely fashion, the President is requiring in subsection (h)(6) to establish a toll-free telephone number that is staffed 24 hours a day. The President is required to inform State and local officials within 60 days of establishment of such telephone number and its accessibility by computer, so States may utilize this information, by computer or other means. The President should conduct educational programs to alert the public about the availability of the "800" number and the inventory. This provision is intended to expand the access to the inventory. Similarly, the requirement that the number be computer accessible enlarges the population that can gain meaningful access to information about these hazardous substances. This information should be computerized as quickly as possible in order to make it accessible to Federal (within EPA as well as outside the agency) and State officials and public. The President may wish to utilize the information management systems developed by the EPA Office of Toxic Substances for this purpose, rather than create a new system. Modification of the existing system to accommodate information obtained under this section can be accomplished within three months at a cost of approximately $50,000, according to the EPA. It is expected that the President will maintain the inventory information.

The amendment also provides that the President may verify data submitted in the inventory, using the authority in section 104(e) of CERCLA. The same paragraph addresses the issue of protected business information. Protection is afforded under 18 U.S.C. Section 1905 for qualified data, except for health and safety data (including release data), which is specifically denied protection under existing section 104(e)(2) of CERCLA. As in other environmental laws, release data is not entitled to protection. It is expected that few, if any, claims for protection would be made, and all such claims would be closely scrutinized by the Administrator and the States. This is particularly true regarding any potential claims of confidentiality for identification of the hazardous substance. The value of the health and safety data (which is excluded from protection) and other information required in the inventory is dependent upon some identification of the hazardous substance.

Penalties for failure to comply with the provisions of the inventory amendment are the same criminal sanctions adopted for other violations of Superfund: $25,000 maximum fine upon conviction and up to one year imprisonment or both.

Many states have responded to the lack of adequate data about hazardous substances by enacting their own legislation. While this amendment establishes a national inventory system, it in no way preempts States from continuing or initiating their own inventory of hazardous substances that are within their borders, regardless of whether the information required by the States is equivalent or in addition to the information required to be provided in this section.

Compliance with this section over the next few years should provided a sound basis for determining where hazardous substances are being produced and what is happening to them after they are produced. This information is essential in reducing human and environmental exposures to hazardous substances.

Scope of Program

SUMMARY

This section amends section 104 (response authorities) to clarify that the President should give primary attention to releases which may present a public health threat and that the President has the discretion to decide when responsible parties are authorized to conduct response in lieu of Fund-financed response. It also makes more explicit the fact that certain circumstances which may present genuine threats to human health, welfare or the environment are not within the scope of CERCLA.

DISCUSSION

Authority to respond

Section 104(a)(1) of the Act currently authorizes response action "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility . . . or by any other responsible party." Some parties have argued that the President cannot act unless the President determines that no other person will properly perform the response. Such an interpretation would result in extensive negotiations and evaluations that are time-consuming and that delay response. This amendment clarifies that the Federal government may authorize the owner or operator of any other responsible party to perform the response action if the President determines that such action will be done properly. This determination need not be made in every case. The President may undertake a response action without making such a determination. The Federal government is not precluded from conducting a response action, merely because responsible parties have indicated a willingness to take some from of response action.

Public health threat

Although CERCLA broadly authorizes response to releases or threatened releases of hazardous substances pollutants, or contaminants into the environment, threats to public health should be the first priority of Superfund response efforts. This does not, however, preclude response to situations which pose solely an environmental threat if the President considers this appropriate.

Clarifying the program's scope

CERCLA response authorities are extremely broad, but there are nevertheless situations, some of which may be life-threatening, which are not within the law's scope. The Agency has encountered some difficulties, primarily political, in restraining CERCLA responses to the scope of the law. For this reason, S. 51 proposes to make more explicit certain areas which the law does not cover.

Specifically, S. 51 makes more clear the exclusion from remedial or removal action of a release or a threat of a release:

—of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

—from products which are part of the structure of, and result in exposure within a facility; and

—into public or private drinking water supplies due to deterioration of the system through ordinary use.

The provision on naturally occurring releases excludes from remedial and removal action situations such as: arsenic trioxide contamination of groundwater that is a result of natural processes such as rainfall; concentrations of hazardous elements in the earth's cusrt; naturally occurring (and undisturbed) radioactive rocks or soils; disease or contamination resulting from animal waste (e.g. beaver excrement); or high concentrations of metal (e.g.

selenium) in surface or groundwater which results from the natural leaching of these metals from the undisturbed soil.

Situations that are not addressed by this amendment and that are therefore eligible for CERCLA response action include, for example, hazardous substances in a lagoon which are released due to overflow caused by rainfall, or drums that have deteriorated through exposure to the elements.

The Environmental Protection Agency has received requests to take removal or remedial action in situations where the contamination was from building materials used in the structure and was creating an indoor hazard. This section would clarify that such situations are not subject to remedial or removal action.

In addition, although CERCLA can and does address contaminated public or private drinking water supplies, some communities have begun to view CERCLA as a means of expanding and repairing existing drinking water supplies. If the drinking water supplies are contaminated as a result of general deterioration of the system rather than as a result of the release of hazardous substances, CERCLA remedial or removal action is not within the law's scope, even if there is a threat to human health.

Savings clause

New subsection (b)(4) provides that, notwithstanding these exclusions, the President can provide remedial or removal action if the President believes that the release or threat of release constitutes a public health or environmental emergency and no other person with the authority and capability will respond in a timely manner.

STATUTORY LIMITS ON REMOVAL

SUMMARY

This section amends section 104(c)(1) of the Act to provide an additional and independent criterion for waiving the statutory limits on removal actions and increase the six month duration limitation to one year. The new criterion permits removals to exceed the $1 million cost and one year duration limitations if the response action is "appropriate and consistent with permanent remedy." The amendment assures that removals accomplish a more complete response, if such response is appropriate in that situation.

DISCUSSION

Section 104(c)(1) of CERCLA limits removal actions to six months in duration and $1 million in cost unless certain waiver criteria are met. These criteria include: a finding that continued action is necessary to prevent or mitigate the emergency and to protect public health and the environment, and that assistance would not otherwise be provided on a timely basis.

The primary effect of the amendment will be to enhance the President's ability to implement the most effective response in removal situations. Generally the amendment will assure that, where appropriate, the first operable units of remedial actions may be considered removals. This will provide the Agency with increased flexibility to quickly initiate the appropriate response action. This ability to implement a response quickly will enhance efforts to contain the migration of hazardous substances. Thus, it will result in increased public health and environmental protection. Responses may also become less costly, since hazardous substances may be contained before they migrate to a much larger area requiring greater response.

STATE CREDIT

SUMMARY

Subsection (a) of this section of the bill amends section 104(c)(3) of current law to allow a State to receive credit for its expenditures at a Superfund site made prior to December 11, 1980, and to apply such a credit to the State's share of cleanup costs at other Superfund sites.

Subsection (b) of this section allows States to receive credit farm the Environmental Protection Agency for the expenditure of State funds for cleanup costs at sites on the National Priority List, in advance of any obligation of Federal funds to those sites. The credit could then be applied against the State share of cleanup costs at other Superfund sites.

In order to receive this credit, a State is required to have entered into a cooperative agreement of contract for this purpose under new section 104(d)(1) of the Act. The credit will only be granted to the State for reasonable, documented, direct out-of-pocket non-Federal funds, and only in accordance with the cooperative agreement.

DISCUSSION

Under current law, credit that is granted for certified State expenditures made during the "window" period of January 1, 1978, to December 11, 1980, can be applied only toward work at the site at which the credit was earned. This section allows the State to apply a credit for expenditures during this period to other sites if little or no work remains to be done at the original site, or if the certified expenditures exceed the State's share of the cleanup costs at the original site.

The purpose of the second part of this amendment is to provide the States with incentive to initiate responses at sites for which cooperative agreements and contracts have been signed at the fastest possible pace. This provision is intended to complement the amendment to the Act that would allow States to enter into multisite cooperative agreements. Included in these agreements could be specification of the types of actions for which credit is allowed under this section.

FUNDING OF REMEDIAL ACTION AT FACILITY OPERATED BY A STATE OR POLITICAL SUBDIVISION

SUMMARY

The reported bill amends section 104(c)(3)(C)(ii) of the Act to impose the 50 percent or greater cost-share only at those facilities operated directly or indirectly by the State or political subdivision.

DISCUSSION

The 50 percent cost-share will be imposed on the basis of operation rather than ownership of the facility at the time of disposal of hazardous substances. It will apply to sites owned and operated by the State; sites owned by the State and operated by a private party under a contract or lease with the State; and sites owned by a private party but operated by the State. The objective of the amendment is to impose the cost-share on States only in those cases where the State is involved in the operation of the facility, either directly or indirectly.

The amendment also provides that, for purposes of this amendment only, the term facility will not include navigable waters or the beds underlying those waters, and thus a 50 percent cost share will not be imposed on States for response actions at such facilities.

Selection of Remedial Actions

SUMMARY

New section 104(c)(4)(A) requires that evaluations of the cost-effectiveness of proposed alternative remedial actions reflect long-term, as well as short-term costs. The long-term cost must include evaluation of the operation and maintenance costs throughout the lifetime of the proposed remedy.

New section 104(c)(4)(B) provides that actions leading to a permanent solution to waste contamination, such as treatment, are to be preferred; short-term containment of relief measures such as transferring waste from one site to another is to be considered the least favored alternative.

New section 104(c)(4)(C) defines a cleanup standard for remedial actions taken under this Act, either Fund-financed or in enforcement actions (including settlements and consent decrees). All remedial actions must attain a degree of cleanup and control of further release which, at a minimum, assures protection of human health and the environment. However, the specific remedy at each site should be relevant and appropriate to the circumstances of the site.

New section 104(c)(4)(D) provides that on-site cleanup or containment actions are not required to be permitted under subtitle C of the Solid Waste Disposal Act, section 402 or 404 of the Clean Water Act, or section 10 of the Rivers and Harbors Act of 1899, but that such actions must satisfy the protection of human health and the environment requirements of subparagraph (C).

New section 104(c)(4)(E) retains language currently in the statute, subject to the new, more specific requirements of this paragraph. This language requires that when selecting appropriate remedial actions, the need to protect human health and the environment at the particular site in question must be balanced against the amounts which would then be available in the Fund for other sites.

DISCUSSION

Under current law, the Administrator is required to select cost-effective remedial actions. New section 104(c)(4)(A) requires that evaluations of the cost-effectiveness of proposed alternative remedial actions reflect long-term, as well as short-term costs. Long-term costs include evaluation of the operation and maintenance costs throughout the lifetime of the proposed remedy. Consideration of long-term costs will undoubtedly lead to more environmentally sound decisions in favor of treatment of hazardous wastes as opposed to short-term measures such as the mere relocation or transfer of contaminated material to another site.

Similarly, subparagraph (B) stresses the need to move toward complete destruction of hazardous substances.

Subparagraph (C) addresses a number of issues related to the degree of cleanup to be achieved by remedial actions. At a minimum, all remedial actions must assure protection of human health and the environment. However, conditions differ at each site. Therefore, the specific remedy should be relevant and appropriate under the circumstances present at each site. For example, the mix of wastes and the size, topography, and geology and other important factors for one site will likely vary from any other. No rigidly uniform remedy would likely be the best at all of these sites. This subsection provides flexibility to the President in the choice of design standards selected for remedial action, rather than mandating, for example, the uniform implementation of design standards under section 3004 of the Solid Waste Disposal Act. The basic performance standard of subtitle C, protection of human health and the environment, does always apply.

Case-by-case distinctions should be made in design requirements where appropriate. Remedial actions can therefore be evaluated under a broad spectrum of factors including cost effectiveness and technical performance, provided that the remedy chosen always protects human health and the environment.

The so-called Fund-balancing provision of subparagraph (E) is considered necessary to assure that sites are cleaned up to the greatest degree possible without sacrificing the protection needed at other sites. However, the Agency may not use this provision to unnecessarily delay cleanup actions because of this balancing test, but rather should assure that available funds are used to attack the most important problem sites. Human health and the environment must be protected in all remedial actions, at a minimum.

State and Federal Contributions to Operation and Maintenance

SUMMARY

The reported bill adds new paragraphs to section 104(c), providing that the cleanup of contaminated ground and surface water at sites on the National Priority List be considered remedial action until protection of human health and the environment is achieved, or for a period of up to 5 years after the commencement of operation of ground or surface water treatment measures, whichever is earlier. Under paragraph (6), after the special taxes and general fund authorizations of this reauthorization bill are obligated, the costs of extended remedial action under paragraph (5) will be paid out of response costs recovered to the Fund for responsible parties.

DISCUSSION

This section provides that the funding for the on-site and off-site cleanup of contaminated ground and surface water be shared on a 90 percent Federal and 10 percent State basis for five years following the construction and commencement of operation of such treatment measures. In the cases where pumping and treating of water or other technology is required, the five-year period would begin after this technology is made operational for continuous use or until protection of public health and the environment is assured, whichever is earlier. Under current EPA policy, the costs of such operation are provided on a 90 percent Federal share for only one year.

The Committee felt that it was important to specify what the financial obligation of the Superfund is in regard to the cleanup of ground and surface water contamination at sites on the National Priority List. The current practice of the Environmental Protection Agency is to finance remedial action activities such as the removal of drums, excavation of soil, and initial treatment of ground and surface waters on the 90/10 basis provided in section 104(c)(3). Under this policy, the long-term treatment of contaminated water becomes a State responsibility one year after all other remedial actions are completed. The continued treatment of contaminated water, which is in actuality major part of the cleanup program, is considered by EPA to be an operation and maintenance cost.

The distinction between remedial action and operation and maintenance should be based on the degree of cleanup that has been achieved. This section determines that the cleanup of ground and surface water, whether on or off-site, is a remedial action until the protection of human health and the environment is assured. This is the minimum requirement for remedial action under section 104(c)(4), as amended.

The Environmental Protection Agency expressed some concern about the possibility that the Agency would have to set aside funds during this five-year authorization period to finance long-term cleanups of contaminated ground and surface water. The reported bill addresses this concern by putting a five-year time limit on the mandatory involvement of the Federal fund in such treatment expenses, and by specifying that expenses accrued after the reauthorization period of the Act be paid exclusively from responsible party cost recoveries.

SITING OF HAZARDOUS WASTE FACILITIES

SUMMARY

The reported bill amends section 104(c) by adding a new paragraph providing that, effective three years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to facilities in compliance with the hazardous waste regulatory program under subtitle C of the Solid Waste Disposal Act for the treatment or diposal of all that state's hazardous wastes for the next twenty years.

DISCUSSION

A critical step in the implementation of a rational, safe hazardous waste program is the creation of new facilities employing the most advanced waste management technologies. But to establish newer, improved facilities, sites on which these facilities can operate must be found and made available. Although most States have enacted or have pending some form of siting legislation, few, if any, have developed policies and siting programs that will assure continued facility capacity in the long term. Recognizing that, as a general rule, States are not moving aggressively to avoid the creation of future Superfund sites, an amendment on siting of hazardous waste facilities was adopted by the Committee.

This section of the bill provides that, effective three years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to RCRA-approved facilities for the treatment or disposal of all of that State's hazardous wastes (other than those wastes that will be recycled) for the next 20 years.

Such assurances must be made to the President. The President is expected to delegate the Federal responsibilities under this amendment to the Administrator of the Environmental Protection Agency.

The availability of funds for "removal actions" is not affected. The short-term, emergency cleanup of, for example, a road side spill or a stack of drums that are about to explode could proceed. What will be withheld are funds for "remedial actions," the long-term, permanent clean-up of sites on the National Priority List.

To avoid a cutoff of funds, each State is required to develop State policies and siting programs that will make the best use of existing facilities in the short term and will assure continued facility capacity in the long term. The details of the siting process will differ depending on the circumstances of each State.

A site in every State is not required. In some cases, multi-state efforts may be appropriate. Use of binding agreements through interstate compacts guaranteeing access to a facility is only one example of how a State may provide the requisite assurances. State or local ownership and operation of facilities or contracts with private facilities may also suffice.

The rationale for this requirement is straight-forward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. Pressures from local citizens place the political system in an extremely vulnerable position. Local officials have to respond to the fears of local citizens. The broader social need for safe hazardous waste management facilities often has not been strongly represented in the siting process. A common result has been that facilities have not been sited, and there has been no significant increase in hazardous waste capacity over the past several years.

In 1976, the Resource Conservation and Recovery Act (RCRA) was passed, mandating the construction of needed hazardous waste facilities and placing the responsibility for siting the facilities with the States.

Unfortunately, when RCRA was first passed, Congress failed to anticipate the intensity of public opposition to new and expanded waste management facilities. While everyone wants hazardous waste managed safely, hardly anyone wishes it managed near them. This is the NIMBY syndrome (not in my backyard). Yet if the RCRA and Superfund programs are to work—if public health and the environment are to be protected—the necessary sites must be made available.

This is not a new issue. In 1976, RCRA directed the States to develop plans for the management of their wastes, including hazardous wastes. In 1980, EPA, the National Governors' Association and numerous other groups and institutions produced reports, handbooks and resolutions on the siting issue.

Section 104 of Superfund already requires that each State assure the availability of a RCRA approved facility for management of materials removed from a site before remedial action can begin. Unfortunately, that condition has been largely ignored by EPA and the States.

Most States have enacted, or have pending some form of siting legislation. Some have chosen to establish siting approval boards; some have chosen to authorize preemption over local zoning laws; some have authorized State acquisition, operation and maintenance of sites through existing institutions or through quasi-public corporations. Which, if any, of these approaches will work remains to be seen. Merely having enacted such legislation, however, will not satisfy the requirements of this section. Each State must provide assurances that their legislative program can work and will be used.

There are a number of obstacles to siting new hazardous waste management facilities. These include:

—First, lack of cooperation among interested parties who distrust one another's motives and doubt the willingness of the other parties to make any substantial concessions to alleviate their concerns. Use of compensation, mitigation or other measures such as land value guarantees or the posting of bonds to finance continued water supply testing and the like might help alleviate some of these problems.

—Second, lack of reliable, objective information or criteria for evaluating proposals and sites and citizens' distrust of technical information provided by government or industry.

—Third, insufficient public perception of the need for new treatment facilities.

—Finally, the most distressing problem, leadership by government officials at all levels is sorely lacking.

A successful siting program should recognize three key principles:

First, a complete technical analysis of all proposed sites is essential prior to the selection of a particular site. This analysis should take into account both environmental effects (e.g. from the hydrology, geology, ecology, etc.) as well as factors based on the proximity and relation of the facility to residences and institutions.

Second, site selection must be accompanied by full public participation. This involvement should start at the beginning of facility planning, and should continue through the site selection and approval process. It should be accompanied by a broad-scale public education effort, since the public needs to become a knowledgable partner in site selection decisions.

The opposition of the public stems in part from the fact that the procedures for citizen involvement have been neither well thought out nor carefully applied. Further, the standard mechanism for involving the public—the public hearing routinely becomes a crowded, highly emotional exercise in mob psychology. In addition, the media often highlight the fears of the opponents, making rational decisions even more difficult to make.

Third, the process of site selection should find a way to transcend blaket local vetoes. No Community should be able to remove itself from consideration on political grounds alone. Everyone must take responsibility for assuring that adequate sites are available.

COOPERATIVE AGREEMENTS

SUMMARY

The reported bill amends section 104(d)(1) of the current law to make clear that contracts and cooperative agreements with States can be on a multi-site basis. In addition, specific activities including enforcement are identified as eligible for funding under such agreements.

DISCUSSION

The Superfund program will be most effective if, to the maximum extent possible, Federal and State governments work in a coperative manner to speed the cleanup of hazardous releases of hazardous substances, pullutants and contaminants. The Act recognizes the importance of the State role by authorizing the President to enter into contracts or cooperative agreements with States for carrying out any or all of the cleanup authorities included Superfund.

The Environmental Protection Agency originally interpreted this authority to permit only contracts or cooperative agreements on a site-by-site basis. However, the Agency has subsequently recognized the advantages to both the Federal Government and the States of permitting "multi-site" cooperative agreements, so that actions at several sites can be grouped under a single contract. S. 2892 explicitly clarifies existing law to authorize the President to enter into contracts or cooperative agreements with States on a multi-site basis as well as on a single site basis and to indicate those type of actions for which the Hazardous Substance Response Trust Fund may be used by the States.

The amendment also authorizes the Administrator to provide Funds to States through contracts or cooperative agreements for the reasonable costs of undertaking enforcement actions against responsible parties for the purpose of securing site responses by those parties.

The Environmental Protection Agency only recently adopted the policy of allowing multi-site cooperative agreements. This amendment assures the continuity of this policy. In addition, the amendment authorizes States to enter into such multi-site agreements on both a prospective and retrospective basis. The first multi-site cooperative agreement granted but EPA, on a prospective basis, was to the State of Pennsylvania, for actions at 12 sites not previously addressed under cooperative agreements. The amendment also permits States to combine existing cooperative agreements under new multi-site agreements (i.e., to enter multi-site agreements on a retrospective basis). EPA is directed to establishs guidelines whereby States, at appropriate times, may be permitted to negotiate new cooperative agreements which combine any or all of their existing single site agreements.

The amendment lists those types of actions which are considered eligible costs under cooperative agreements. In addition to response costs, these include related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administrative of remedial activities authorized by the act. With the exception of enforcement costs, all of the above costs are currently eligible and therefore do not constitute a change from current policy.

Enforcement costs are included in this list to improve the capability of States to undertake enforcement actions against responsible parties for the purpose of securing site response by those parties. Eligible enforcement costs include, but are not limited to, the costs of information gathering, discovery, expert witnesses and other expenses related to litigation or administrative enforcement, and State oversight of private party responses to the extent such oversight costs are not otherwise provided by those private parties.

Nothing in section 104(d)(1) shall preclude the President from taking a separate enforcement action against those parties included in a State enforcement action, nor require him to enter into a cooperative agreement or contract prior to undertaking a Federal enforcement action.

One substantial advantage of multi-site cooperative agreements is that they will better enable EPA and the States to more effectively and efficiently use and target their limited resources. Under a multi-site agreement, a State would be able, with EPA's concurrence, to shift funds from one site to another included under the same multi-site cooperative agreement. This provision will allow States and EPA to quickly deobligate funds from sites for which they were originally slated but no longer needed, or not needed at the moment, and reobligate the funds for activities needed at another site, without going through the current lengthy process of EPA withdrawing the monies to the Hazardous Substances Response Trust and then negotiating a new cooperative agreement for reobligating the funds to the State.

ACCESS AND INFORMATION GATHERING

SUMMARY

As amended by the reported bill, section 104(e) of CERCLA restates the authority of the President to request information concerning the treatment, storage, disposal, or handling of hazardous substances, and to enter premises where hazardous substances were generated, stored, treated, disposed, or transported. This amendment clarifies that the President also has the power to compel compliance with information and access requests and clarifies and confirms the broad reach of the President's authority.

DISCUSSION

Currently, authority to enforce information requests under CERCLA is implicit. In addition, there is no explicit language to compel parties to provide access to the site or adjacent areas. Courts have consistently granted the government's requests for access and information; moreover, landowners frequently provide access and information voluntarily. Express statutory authority, however, will encourage private parties to consent to access and information requests. The amendment provides this express statutory authority, and also facilitates the process by which the President can obtain judicial enforcement of requests for information and access. Administrative orders issued under this section will be within the preclusion of pre-enforcement review provided by section 113 of CERCLA as amended.

This amendment establishes procedures for the President to issue orders for access and information. The President is to notify potential recipients of orders and provide an opportunity for consultation. The amendment also provides a mechanism for seeking a Federal court injunction barring interference with information or access requests. Penalties are specified for violations of administrative orders.

The amendment confirms the broad access authority that the Congress originally intended when CERCLA was enacted in 1980. Access is authorized concerning establishments or other places or properties not only when hazardous substances are, may be, or have been generated, stored, treated, disposal of, or transported from, but also where there has been or may have been a release or threatened release. Further, entry is permissible to determine the need for response or the appropriate response or to effectuate a response. Thus, government representatives, including authorized contractors, may not only enter sites of known or suspected releases themselves, but also may enter adjacent properties to determine whether a release of threatened release has occurred or to undertake other activities necessary to a response action. The amendment also preserves the President's authority to obtain access or information through any other lawful means. For example, in exigent circumstances, where the President has a reasonable basis to believe that documents may be destroyed or site conditions changed if a request for access or information were made, the President may obtain an ex parte warrant for entry, access to documents, sampling, or other needed activities.

HEALTH RELATED AUTHORITIES

SUMMARY

The reported bill amended section 104(i) of the Act by adding twelve new paragraphs relating to health assessments, health studies, and other authorities of the Agency for Toxic Substances and Disease Registry (ATSDR). These are described in detail in the Discussion below. In addition, the bill amends section 111(c)(4) to clarify that all the work of ATSDR, including toxicologic and other laboratory studies, health assessments, and epidemiologic studies, are to be paid out of Superfund. A new section 111(n) is added, making available not less than 5 percent of the annual appropriation out of the Fund (or $50,000,000, whichever is less) for each fiscal year, directly to the Agency for Toxic Substantes and Disese Registry. ATSDR is expected to cooperate and communicate with the Environmental Protection Agency in the implementation of these authorities.

The bill amends section 3019 of the Solid Waste Disposal Act, requiring certain information on exposure to hazardous substances released from hazardous waste disposal facilities to be made available by the owner or operator. Finally, the reported bill makes several technical amendments to section 104(i) of current law.

DISCUSSION

From the outset of its efforts to address the problem of toxic chemicals, the Congress has been concerned by the likelihood that releases of hazardous substances, pollutants and contaminants into the invironment pose a significant threat to public health. The public, as well as the scientific community, has suggested that facilities or release of hazardous substances and other toxic chemicals may be threating the health of nearby residents due to their presence.

Partially for this reason the Comprehensive Environmental Response, Compensation and Liability Act contains section 104(i), establishing the Agency for Toxic Substances and Disease Registry (ATSDR), which is required to undertake and coordinate health-related activities for toxic chemicals generally and superfund specifically.

Despite this requirement, ATSDR was not immediately established by the Secretary of Health and Human Serices. A lawsuit by outside private organizations was ultimately necessary to compel the Agency's establishment.

To date, ATSDR has failed to receive adequate funding under the Superfund program, and without additional assured funds and personnel the Agency will be unable to carry out is mandated functions. The health-related amendments in S. 51, as reported, are designed to improve upon the original health authorities contained in section 104(i) of CERCLA. In general, the health-related authorities of the Act have not been adequately exercised. Congress has addressed this issue on an ad hoc basis, year-by-year, by increasing the appropriations for ATSDR and otherwise encouraging complete implementation of the law's provisions. The amendments in S. 51 as reported should resolve this problem by creating a permanent earmarking of Funds which will be supplied directly to the Agency, and not pass through the Environmental Protection Agency or be reliant upon that Agency's budget process.

In general, protection of human health is the highest and ultimate goal of the Nation's environmental laws. Health effects data and information underlie all response actions taken under Superfund, as well as most action taken under other environmental laws. To truly protect human health and the environment requires that high priority be placed on the development of reliable data on the health effects of exposures to hazardous substances and other toxic chemicals. Only with such information can informed and rational judgments be made as to what actions must be taken to protect human health. Without information as to what substances are toxic, at what concentrations and under what conditions, it is not possible to determine with confidence which sites should be given highest priority in the cleanup and response process.

Conducting health assessments and studies of populations exposed to releases of hazardous substances from sites and facilities will not only enhance response to immediate health concerns, but will also build a comprehensive body of data that will define the threat that toxic chemicals pose to human health. In the long-term, greater knowledge of the human health effects of exposure to toxic substances will improve the prevention and control strategies required to protect and improve the health of the citizens of this country.

New paragraph (2) of section 104(i) requires the Agency for Toxic Substances and Disease Registry (ATSDR) to provide consultations on health issues relating to exposure to hazardous or toxic substances when so requested by the Environmental Protection Agency (EPA), State or local officials. Consultations to individuals may be provided by the States under cooperative agreements.

ATSDR will provide advice to the EPA, States, and local officials when available data indicate that the hazardous materials or toxic substances potentially have an adverse effect on the health of populations which may be exposed. This advice may include recommended exposure limits or assistance in identifying pathways of exposure so that EPA, the States, and local officials may prevent such exposure in order to protect the public health. The content of a health consultation may be communicated by a short telephone call from a knowledgeable health professional or it may require a more extensive consultation with a site visit, depending on circumstances and community needs. Generally, advice to individuals, as opposed to government entities, will be provided by officials within the States.

Paragraph (3) requires ATSDR to perform health assessments at all existing National Priority List (NPL) sites within two years of the date of enactment. Assessments shall be performed at all sites added to the NPL (after the date of enactment of the bill), within one year of their inclusion on the NPL. ATSDR shall also perform health assessments at RCRA subtitle C hazardous waste disposal facilities, as required under section 3019 of the Solid Waste Disposal Act, where there is sufficient data as to what hazardous substances are present in such facility, when so requested by EPA or a State.

Paragraph 3(B) also provides individuals the oportunity to petition, or make an informal or formal request, for a health assessment where it can be shown that individuals have been exposed to a hazardous substance, the probable source of which is a release under the act. The petition for a health assessment can be very brief and need only present such information on the identify and concentrations of toxic substances as is known to the petitioners and the nature of any health effects observed by or reported to the petitioners at the time of filing their petition. Further information on conditions at or near the site or on the identity and levels of toxic substances contributing to exposure may be obtained by the Administrator from the EPA, State agencies, or responsible parties. If lack of information is a factor in a decision not to perform a health assessment, the Administrator should inform the petitioners of his need for more information. Other reasons for not providing an assessment may be that no response is needed or that a consultation should be adequate. If a request has a low priority under the scheme in paragraph (3)(C) of this subsection, an assessment may be deferred but not necessarily denied unless extenuating circumstances exist. In the case of any petition, if ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

The results of consultations and health assessments performed under this section, whether by a State or by the Administrator of ATSDR, and any recommendations for further action shall be made available to the individual or organization requesting the consultation or assessment and shall be available to any other person requesting them, except to the extent that deletions from such results or recommendations are required by other law to protect personal privacy.

Each health assessment performed under this subsection shall include a finding as to whether the exposure assessed presents a potentially significant risk to human health, in order to permit the implementation of paragraph (5) of this subsection, and shall include a finding as to whether the exposure concerned creates a significant risk to human health, in order to permit the implementation of paragraph (7) of this subsection.

The Administrator should, through existing channels such as CDC's Morbidity and Mortality Weekly Report and through notice in the Federal Register, assure that physicians and State and local health officials are aware of the provisions for requesting consultations and health assessments from the Agency and from the States and of the nature of the information needed in requesting such services.

Paragraph (3)(C) directs the Administrator of ATSDR to establish a priority system for determining in what order, and for those not required by this paragraph, at which CERCLA and RCRA sites health assessments shall be conducted. Highest priority shall be given to those sites at which all three of the following criteria apply: First, there exists documented evidence of release of hazardous constituents into the environment; second, the potential risk to human health as a result of the documented risk appears highest, and; third, in the Administrator's judgment, existing health survey data gathered at the given site and other similar sites are inadequate to assess the potential risk to human health posed by the site. The existence of these criteria, however, is not intended to require ATSDR to first survey the entire universe of sites in order to establish a ranking before choosing to conduct health assessments or other studies at individual sites.

Paragraph (3)(D) requires that the results of any health assessments conducted by States or political subdivisions be reported to the Administrator of ATSDR, and include recommendations for any further health-related activities which should be undertaken at the site. On the basis of a health assessment, findings and recommendations should also be made as to whether any immediate actions should be taken to protect human health under paragraph (7) of this section. The Administrator of ATSDR is directed to include similar findings and recommendations in any health assessments carried out directly by ATSDR. In addition, ATSDR is expected to issue periodic reports on the results of all health assessments conducted under this authority. One possible source of publication for these reports is the Morbidity and Mortality Weekly Report, published by the Centers for Disease Control.

Paragraph (3)(E) of the section defines "health assessments" and makes implicit reference to a standard four-step approach to site-specific health studies developed by the ATSDR. As described by Dr. James O. Mason, Administrator, ATSDR, before the Senate Environment and Public Works Committee on May 24, 1984, the first step is to assess the potential health hazard posed by a site on the basis of results of environmental sampling.

"Health assessments" are defined in the amendment to include a broad, overall examination of the release, site or facility and to assess its potential risk to the health of the nearby population. Health assessments should include:

> First, a determination of the nature and extent of the release (e.g., the hazardous constituents and the amounts and concentrations in which they have been released).
>
> Second, information on existing or potential pathways of human exposure to the release, including contaminated ground or surface water, air emissions, and contamination of the food chain.
>
> Third, the size and potential susceptibility of the community within the existing or potential pathways of human exposure (e.g., the number of people, their ages and fitness, etc.).
>
> Fourth, a comparison of observed (measured) or expected human exposure levels at the site with known short-term and long-term (acute and chronic) health effects associated with the identified hazardous substances and any available recommended exposure or tolerance limits for such contaminants.
>
> Fifth, an analysis of available existing morbidity and mortality data for the population under study on diseases that may be associated with the observed levels of exposure, including comparison of observed versus expected morbidity and mortality rates where appropriate.
>
> And sixth, an evaluation of the risks to the potentially affected population from all sources of the hazardous substance, including known point or no point sources other than the site or facility in question.

ATSDR estimates the average cost of a health assessment to be $4,000 per site. Under paragraph (3)(G), the costs of any health assessments or further health studies conducted at CERCLA or RCRA sites under this authority may be recovered under the provisions of section 107 of CERCLA from the owner or operator of such site or others physically contributing to the release. If sources other than the RCRA or CERCLA site under study also contributed to the release, they would have to bear their share of liability.

Paragraph (4) provides that if, on the basis of a health assessment, potential for a serious health hazard is found, and if, in the judgement of the Administrator it is appropriate, a pilot epidemiologic study—cross-sectional or retrospective—of a group of people identified as the most highly exposed is undertaken. Control groups may also be included in the pilot study protocol. If the pilot study appears to validate the presence of excess morbidity or mortality, and if the Administrator of ATSDR believes it would be appropriate, the third step is to conduct a health study or full-scale epidemiologic study—including medical evaluations where indicated—of the entire affected population.

In determining whether to conduct a full-scale health study at a site, the Administrator should consider whether such a study would be scientifically feasible and also whether such a study would be useful to determine further, beyond what is known from health assessments, the nature and extent of potential health effects at the site. Another important consideration is whether scientifically valid studies have already been conducted in other situations or at other sites with similar conditions and exposures.

The average cost of a pilot is estimated by ATSDR at $30,000. Full-scale epidemiologic studies typically take more than six months to perform and cost in excess of $100,000.

Paragraph (5) provides that the Administrator shall consider whether the establishment of a registry of exposed persons at each site for which a health assessment has been completed is scientifically feasible and would contribute to the purpose of this subsection. Important considerations include the usefulness of such a registry, the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

The issue of registries is one of the most difficult issues to address because of their costs, the mobility of the population, and the long-term commitment of resources to maintain the registries for 10, 20, 30 or more years. Exposure registries appear to be most valuable when persistent measurable levels of hazardous agents in which animal studies or other evidence predict significant toxic effects in humans or for hazardous agents for which current methods exist to prevent an adverse outcome.

Because of the potential migration of the population, if sufficient evidence exists that it may be necessary to establish a registry in the future, it may be cost effective and reasonable for the Administrator of ATSDR to obtain identifying and locator information on the people currently exposed so that in the event a registry is determined to be useful, the Administrator of ATSDR will be able to locate and identify those individuals to place them on the registry. This initial list of exposed persons may include nothing more than a list of the exposed persons by name, address, date of birth, and some identifier, such as license number. Such a list would form the basis for the late establishment of a formal registry, if the Administrator determines that such a registry would be appropriate.

Under paragraph (6), the Administrator of STSDR is required to conduct a study and report to Congress within 2 years on the usefulness, cost, and potential implications of medical surveillance programs as part of the health studies authorized under this section. Medical surveillance programs are periodic screening programs to identify diseases in exposed populations with periodic medical testing and provide a mechanism of referring for treatment those who are diagnosed as having such disease.

Paragraph (7) provides that if a health assessment or other study conducted under paragraphs (3) or (4) contains a finding that the exposure presents a significant risk to human health, the President is required to take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the risk to human health. This authority includes, but is not limited to, providing alternative water supplies, and permanent or temporary relocation of individuals. Most often, such decisions will be taken in response to acute risks and hazards, which are most likely to be detected by a health assessment or pilot epidemiologic study. As provided in this bill, the provision of alternative water supplies includes, but is not limited to, drinking water and household water supplies.

Paragraph (8) clarifies that none of the health-related activities authorized in this section is to be construed to delay or otherwise affect or impair the ability of the Administrator of the EPA to exercise any authority under sections 104 or 106 of the Act or under section 7003 of the Solid Waste Disposal Act. This paragraph is necessary in order to assure that the public, EPA, ATSDR, or the President, does not use the health-related authorities as a means of impeding or delaying necessary clean-up activities at a site. In addition, this paragraph is meant to clarify that the internal peer review process for all studies conducted under this section, under paragraph (10), shall not preclude or prevent the EPA from taking emergency or other actions at a site if preliminary results of a study suggest that serious health hazards exist and must be mitigated, but before the full study can be released to the public.

Under paragraph (9)(A) of this subsection, the Administrator of ATSDR is required to prepare lists of the harardous substances which present the most significant potential threat to human health either due to their common presence at sites or due to the potential toxicity of the compound. Within 6 months of the date of enactment a list of 100 such compounds will be prepared; within 24 months of enactment an additional 100 will be added. Further substances will be added as frequently as they are identified. Paragraph (9)(C) requires the Administrator to look at what is known about the toxic material that is placed on the list and, if sufficient information is not available, to assure that a research program is begun to provide that information. Paragraph (9)(B) provides authority for research on methods to perform toxicologic testing for two or more compounds which exist together (i.e. mixtures, mixed disposal). These methods are not now generally available.

The Committee is concerned about the enormous toxicity data gap associated with industrial chemicals. A recent National Academy of Sciences Study of the adequacy of health effects data on chemicals found that about 80 percent have no toxicity data at all. The Environmental Protection Agency has testified that there is not enough health effects data on common organic chemical contaminants of drinking water to set standards for these contaminants. Many of these contaminants are asociated with Superfund sites. The general dearth of health effects data on these chemicals is hindering the Agency's efforts to grapple with priority setting and cleanup standards in the Superfund program.

Paragraph (9)(B) also provides detailed guidance on the types of laboratory tests may be required. Not all of these tests need to be done for each substance, but a phased approach to identify the hazards for each substance is necessary. Some substance will require very extensive work; others less work, or perhaps none at all. The Administrator should also undertake research on methods for detecting low-level exposure or markers of preclinical effects related to exposure to toxic substances and for evaluating sensitive indicators of exposure to such substances.

Paragraph (9)(D) provides that the research undertaken for these materials be coordinated with toxicologic testing and research that is conducted by the National Toxicology Program and the Environmental Protection Agency under the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. Some testing of chemical substances that may be listed by the Administrator is underway pursuant to the authorities of these statutes. These statutes provide authorities whereby the Environmental Protection Agency can require manufacturers and processors of chemical substances to perform the necessary health effects testing. The Administrator should also coordinate these efforts with those of the National Toxicology Program. The purpose of coordination is to avoid duplication of effort and to assure that listed substances are tested at the earliest practicable date. In coordinating research under this paragraph with toxicologic testing under other programs, the Administrator shall give due consideration to the differing goals and testing requirements of such other programs in determining the need for additional or different testing in order to meet the goals and requirements of CERCLA. The overriding consideration is to assure that tests are conducted expeditiously and, if recourse to other authorities would result in more than mimimal delay, work should be undertaken pursuant to the exposure Superfund authorities.

Paragraph (9)(E) expresses the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs to toxicologic testing under the Toxic Subtances Control Act. Where it is impractical to secure such funding from the manufacturer, the costs of the required research programs should be borne by the parties responsible for the release of the hazardous substances in question. The costs of conducting such a research program are deemed to be eligible under section 107 of the Act for the purposes of recovery from a party responsible for a release of such hazardous substance. In particular, costs of such research should be sought from generators of the substance, rather than from transporters or disposal firms.

After completing research and review of al available information for each substances included on the list, the Administrator is required to publish, revise, and republish the information as necessary, but not less than once every 5 years, so that it will be available to the States and other interested parties. These toxicologic profiles are required by paragraph (9)(F), and should contain a succinct summary of the health effects of the substances or mixture of substances, in a style accessible and understandable to public health professionals who lack substantial training in toxicology, and with references to major clinical and research studies for those who can make use of them. Such profiles shall be prepared for all the substances listed under paragarph (9)(A), regardless of whether additional research on such substances is required to be initiated. Profiles on mixtures of substances shall also be prepared as such information becomes available. All these toxicologic profiles should be made as accessible as possible to Federal, State and local officials, as well as to health professionals. One means by which to provide ready access would be to have the profiles included in the National Library of Medicine computer system.

Paragraph (10) requires that ATSDR establish a mechanism of internal peer review for all studies (other than health assessments) and results fo research conducted under this subsection. It is the intent of the paragraph to require such internal peer review of any and all such studies or results of research prior to their release to the public. It is recognized that time may not always permit, and the Administrator of ATSDR may not always find it appropriate to conduct, peer reviews of each individual site health assessment. Whenever conducted, the peer review shall be performed by panels consisting of no fewer than three and no more than seven disinterested scientific experts, selected by the Administrator of ATSDR on the basis of their scientific objectivity and a lack of institutional ties with any person involved in the conduct of th estudy or research under review. The support staff for the review panels shall come from ATSDR. Peer reviewers shall remain anonymous until such time as their findings are made known. After completion of the peer review process, the STSDR will make the significance of the results known to the study participants (in the case of a health study). The background data, calculations, results, interpretations and conclusions of any and all studies and programs of research conducted under this authority shall be published as appropriate in peer reviewed scientific journals. In addition, summaries will be periodically published as supplements to the Morbidity and Mortality Weekly Report.

These peer review and reporting requirements are necessary in order to assure that sound and valid scientific work is performed and reported to the public, as well as to assure the objectivity and credibility of the ATSDR. In addition, the ATSDR is expected to publish periodic reports of the results of health assessments and other studies which it conducts or oversees in order to provide further information on the overall extent and nature of the potential threat to public health posed by hazardous waste sites.

Under paragraph (11), the Administrator of ATSDR is authorized to establish a program for the education of physicians and other health professionals in the methods of diagnosis and treatment of injury or diseases related to exposure to toxic substances. The Administrator is to report back to the Congress not late than two years after the date of enactment on the implementation of this paragraph.

It is the intent of this authority to encourage the transfer of medical information to practicing physicians and other health professionals who are providing care to individual patients. There are several methods that may be used here, such as conferences, meetings, symposia, home study courses, short training courses, etc. In addition, training centers could be set up around the country. The Administrator should review all options which are authorized under this authority, determine the most cost effective, implement the, and report to the Congress. It is desirable here that plans be devised to provide the the necessary information to the maximum number of practicing health professionals.

Under paragraph (12), to implement its authorities, the ATSDR must be provided with adequate personnel, but no fewer than 100 full-time equivalent employees [FTE's] it is the intent of this amendment to provide increased personnel for the ATSDR without forcing a concomitant reduction in FTE's in other components of the Department of Health and Human Services.

Paragraph 13 grants authority to the ATSDR to enter into cooperative agreements with States or political subdivisions thereof for the purpose of delegating any or all of the functions of the ATSDR under this section and providing funding for the delegated functions, which may include the conduct of health assessments of RCRA and CERCLA sites, and the provision of health consultations. This cooperative agreement authority is modeled after similar authority provided under section 104(d), except that it allows such cooperative agreements to cover any or all of, but not necessarily limited to, the following: health consultations and assessments, health and epidemiologic studies, health referral systems, data collection systems, disease registries, and establishment of ongoing environmental health risk assessment programs, Other activities may also be delegated through cooperative agreements at the discretion of the Administrator of ATSDR.

This paragraph also amends section 111(c)(4) to clarify that all the expenses of ATSDR are to be paid out of Superfund. A new section 111(n) is added, making available not less 5 percent of the annual appropriation out of the Fund (or $50,000,000, which is less) for each fiscal year, directly to the Agency for Toxic Substances and Disease Registry. Funds which the ATSDR has not obligated by the beginning of their fourth quarter of the fiscal year in which made available are to be returned to the Trust Fund. These provisions, however, shall not preclude the ATDSR from seeking and receiving additional funds from the Environmental Protection Agency under separate interagency agreements if the need for, and cost of, separate health studies exceeds ATSDR's budgeted capacity.

The reported bill amends section 3019 of the Solid Waste Disposal Act. That section requires that owners and operators of landfills and surface impoundments submit to the Agency—or authorized State—an assessment of the potential for the public to be exposed to hazardous substances released from these units. The assessment must address reasonably forseeable potential releases from both normal operations and accidents. The former includes the steady release of small quantities of volatile chemicals into the air, and the seepage of waste constituents through clay liners. The latter results from abnormal operating conditions and includes fires, explosions, and major liner failures, as well as transportation accidents.

Owners/operators are required to obtain reasonably ascertainable information of types of releases, the potential pathways of human exposure, the magnitude of the exposed population, and the nature and toxicity of the hazardous substances.

Owners/operators should already have access to most of the information required under this section. Regarding accident data, there are many reasons why such information should already have been compiled. Concern for worker safety, avoidance of plant shutdowns, and a desire to keep insurance premiums at a minimum all create an existing incentive for owners/operators to identify sources of potential accidents at their facilities and to take preventive measures to correct them. Thus, for example, it is a common practice for plant operators to identify existing hazards with the "standard checklist" method—see, for example, American Institute of Chemical Engineers, Fire and Explosion Guide, 1980. Where such assessments have been conducted, all that owners/operators need further do to comply with section 3019 is identify the potential pathways—for example air, surface water—for hazardous substances released during an accident, and the nature and magnitude of the release and the potentially exposed population.

Similarly, owners/operators should already have access to data on routine releases from their facilities. In order for insurance carriers to compute premiums for nonsudden liability coverage—as required under 40 CFR part 264—they often survey their client's facility to determine the risk of exposure of third parties to anticipated releases. Where insurance carriers provide this information to their clients, this should largely relieve owners/operators of the burden of developing the date required under section 3019.

This assessment must be submitted to the Agency—or an authorized State—either with the part B application or, for facilities for which a complete part B application has already been submitted, 9 months after enactment. However, submission of an adequate exposure assessment is not a condition for permit issuance; noncompliance with section 3019 is a separate violation of RCRA and should not be viewed as a vehicle to delay the permitting process. Furthermore, owners/operators should not postpone conducting the assessment in section 3019 in anticipation that EPA will subsequently promulgate regulations interpreting the statutory requirements.

The EPA shall make all information collected under section 3019 available to the ATSDR. If, in the opinion of the Administrator of the ATSDR, the Administrator of the EPA, or a State—in the case of a State with an authorized program—conditions exist which warrant a health assessment at a particular landfill or surface impoundment, such assessment, and any further necessary actions, shall be conducted by the ATSDR in accordance with the provisions of section 104(i) of CERCLA. A health assessment at a RCRA landfill or surface impoundment would be appropriate if the facility posed a substantial potential risk to human health for any one of a variety of reasons: the existence of actual releases of hazardous constituents; magnitude of contamination with hazardous constituents which may be the result of a release, or; the magnitude of the population exposed to such release or contamination.

As reported, the bill also makes two technical amendments to existing statute. First, the bill clarifies that the ATSDR shall report directly to the Secretary of Health and Human Services, not to the Surgeon General. Second, the bill replaces the term "chromosomal testing" in current section 104(i)(4), with the phrase "appropriate testing."

PUBLIC PARTICIPATION

SUMMARY

The reported bill adds a new subsection to section 104 which requires an opportunity for public comment before the Federal government or any State (operating under a cooperative agreement) selects a particular remedial action at any site or enters into any settlement agreement or otherwise disposes of any claim against any party under the act, including entry of an order against such party. Notice to the public must be accompanied by a reasonable explanation of the proposed remedial action and major alternatives considered.

DISCUSSION

The support of communities affected by Superfund sites is important to the success of any cleanup plan. Affected communities will demonstrate stronger support for cleanup actions if they are involved from the outset in developing and selecting the actions necessary at the sites.

Therefore, this section of the bill requires the Environmental Protection Agency, working with the Department of Justice, to develop procedures for assuring that the public will be made aware of proposed remedies (including those to be implemented by the EPA, by States, and by private parties), as well as affording them the opportunity to comment upon that remedy or offer alternatives for consideration by the EPA or States prior to the final selection and implementation of the remedy.

In the case of a Fund-financed remedy undertaken by EPA or a State (acting through a cooperative agreement), this will mean publicizing and taking comment on the results of the Remedial Investigation and Feasibility Study before final selection of a remedial action. In the case of a remedy undertaken by responsible parties resulting from an enforcement action, this will mean publicizing and taking comment on the proposed remedy secured through negotiations with those parties before a consent order, decree or agreement becomes final.

In all cases, effective notice must first be given to the interested public. The notice must be accompanied by a discussion and analysis which provides a reasonable explanation to the interested public of the proposed remedial action and alternative proposals under consideration. The Federal government or State must then provide an opportunity for a public meeting in the affected area and a reasonable opportunity to comment on the proposed remedial action and alternatives. A comment period of 30 days would be proper in most instances.

When the remedial action is selected, the Administrator should make public the plan for the selected action, review comments received on the proposed plan and alternatives, and make any appropriate changes to the plan. A brief explanation to the community of why changes were made, or not made, may also be helpful.

If the remedial action proceeds in two or more distinct phases and separate studies and alternatives are developed at different times for different phases, the process of notice and opportunity for comment shall apply to each phase.

If the public is to make maximum use of a relatively brief comment period on the remedial plan, it must be well informed before that period begins. To this end, the Administrator should make data, studies, reports, and other information on the contents or conditions of the site and its likely effects on health and the environment, and any preliminary information on possible remedial actions and feasibility studies, promptly available at a central location near the site and accessible to interested members of the public. However, this must not become unreasonably burdensome for the Administrator, and the Administrator need not send every single datum or communication on the site to the central location.

The Environmental Protection Agency advised the Committee that this amendment is consistent with current Agency policies concerning community participation.

This provision should not impose excessive burdens on EPA. Reasonable time limits on the notice and comment period should assure that the final selection and implementation of the remedy is not unduly delayed. While this will require some additional time, adding some steps to the selection of any cleanup plan to provide public participation will engender public confidence and ultimately save both time and resources.

LOVE CANAL PROPERTY ACQUISITION AMENDMENT

SUMMARY

The reported bill adds a new subsection to section 104, which directs the Administrator of the Environmental Protection Agency to place a high priority on the purchase of the remaining properties in the Love Canal emergency declaration area in Niagara Falls, New York.

DISCUSSION

Under a 1980 agreement between the Federal Emergency Management Agency (FEMA) and the State of New York, funds are available to purchase all the owner-occupied homes in the Love Canal emergency declaration area. Non-owner-occupied homes, commercial properties, community facilities, and vacant properties are not eligible for purchase under the FEMA-State agreement.

This section specifies that the Administrator use monies available under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to purchase the remaining properties. The estimated cost of the properties involved is $4 million.

ADMINISTRATIVE ORDERS FOR SECTION 104(b) ACTIONS

SUMMARY

This section authorizes the President to issue administrative orders on consent to potentially responsible parties for conduct of a Remedial Investigation/Feasibility Study (RI/FS). Enabling the President to issue these orders will increase the prospect that responsible parties will agree to conduct RI/FS' and cleanups consistent with the requirements of CERCLA.

DISCUSSION

In many circumstances it may be appropriate for responsible parties to conduct the remedial investigations and feasibility studies (RI/FS') which guide the President's remedial decisions. Private parties are more likely to assume responsibility for conduct of cleanup action if they have had opportunities for involvement in the decision concerning the appropriate remedy. Private-party RI/FS' are a valuable part of the CERCLA cleanup program when they are technically sound and conducted in a timely fashion, the alternatives are consistent with the requirements of CERCLA, and their development is subject to adequate oversight by the government.

The government's oversight can be most effectively conducted when the responsible parties conducting the RI/FS are subject to an administrative order. CERCLA currently authorizes the President to issue administrative orders under section 106. However, the start of an RI/FS under section 106 may be delayed while the government and responsible parties debate the existence of an "imminent and substantial endangerment," as specified in section 106.

Therefore, in appropriate circumstances, it will be useful for the President to issue orders on consent for private party RI/FS' which are not based upon the criteria of section 106. These section 104(b) orders will increase the likelihood that potentially responsible parties will conduct RI/FS' and ultimately consent to undertake cleanup, thus making available Fund resources for additional sites.

Settlements for the design and construction of the remedy would continue to be ratified by section 106 orders or consent decrees.

NATIONAL CONTINGENCY PLAN—HAZARD RANKING SYSTEM

SUMMARY

The reported bill adds two new subsections to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act. New section 105(b) requires the President to revise the National Hazardous Substance Plan not later than twelve months after the date of enactment of these amendments to provide procedures and standards for remedial actions undertaken pursuant to CERCLA which are consistent with the amendments made by this Act.

New section 105(c) requires the President by rule, not later than twelve months after the date of enactment of these amendments, to promulgate amendments to the hazard reanking system in effect on September 1, 1984. These amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. These amendments shall take effect as of the date established by the President, not later than eighteen months after the enactment of the Superfund Amendments of 1984. The amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date of the amendments. The hazard ranking system in effect on September 1, 1984, shall continue in full force and effect until the new regulations are in effect.

DISCUSSION

The President is directed to update the National Contingency Plan originally published for section 311 of the Clean Water Act so that the plan reflects the responsibilities and powers created by S. 51. The original CERCLA legislation required the revisions of the National Contingency Plan to add a new section giving some consistency and cohesiveness to response planning and actions for hazardous substance response actions. The Plan includes among other items:

(1) appropriate roles and responsibilities for Federal, State and local authorities and non-governmental entities;

(2) methods for discovering and investigating sites of disposed hazardous substances and in-place concentrations of such substances;

(3) methods and criteria for determining the appropriate extent of response measures;

(4) methods for evaluating remedial actions; and

(5) provision for obtaining prepositioning and maintaining necessary response capabilities.

After the revised plan reflecting the current amendments is published, removal and remedial actions should be in accordance with the Plan to the greatest extent possible.

The present hazard ranking system based on the so-called Mitre Model has been criticized for failing to assess accurately the relative degree of hazard posed by various sites and facilities. The purpose of the hazard ranking system is to indicate degree of hazard or risk in order to determine whether a site or facility should be placed on the National Priority List. In particular, the validity of the present hazard ranking system has been questioned for identifying the degree of hazard or risk posed by mining sites. The hazard ranking system appeared to identify the most hazardous constituent a site, quantify the total amount of wastes at the site, then assume that all of the waste is comprised of the most hazardous constituent. This could introduce a bias in the hazard ranking system against large quantities of waste with the presence of trace toxic metals, such as typical mining wastes.

In order to determine whether such a bias exists and establish a system which accurately assesses the relative hazard in candidates for remedial action, the bill requires the hazard ranking system to be revised through a rule-making proceeding.

The provision is meant to deal with this problem without interfering with continued EPA progress toward assessing potential site hazards, listing sites, or beginning clean-up action. It would not affect any site or facility listed prior to the actual effective date of the new hazard ranking system, nor would it require the ranking or listing of any site or facility to be delayed. But by assuring greater accuracy in the hazard ranking system, highest priority attention would be focused on the sites posing genuinely the greatest danger.

The amendment meets this objective by (1) setting up a review and public comment procedure and requiring promulgation of revisions in one year; (2) assuring that the new system will go into effect by a date established by the President, to be not later than 18 months after enactment; (3) establishing a substantive standard for the hazard ranking system that to the maximum extent feasible is an accurate assessment of the relative degree of risk to human health and the environment of the sites to be reviewed; and (4) leaving the present hazard ranking system in operation until the more accurate hazard ranking system can be put into effect for sites to be listed thereafter.

NATIONAL CONTINGENCY PLAN

SUMMARY

The reported bill amends section 105(a)(8)(B) (as designated by this Act) to eliminate the requirement that the National Contingency Plan include at least 400 facilities and clarify that States are allowed only one highest priority designation for the life of the list.

DISCUSSION

Under current law, the National Priorities List must contain at least 400 top priority facilities. Deletion of this phrase will allow the EPA to select and place on the NPL only those facilities which present "the greatest danger to public health, welfare, or the environment," based on the criteria of section 105 of the Act.

The second part of the amendment would be a ratification of EPA's present policy of permitting States to make only one highest priority designation. This policy is reflected in the most recent proposed revisions to the NCP.

If a State's highest priority facility is cleaned up and deleted from the NPL, the State will not get another highest priority designation. Allowing another priority designation would provide the States with an opportunity to circumvent the hazard ranking system developed under the NCP.

FOREIGN VESSELS

SUMMARY

The reported bill deletes from section 107(a)(1) of CERCLA a clause which excluded from liability under CERCLA all foreign vessels not otherwise under United States jurisdiction.

DISCUSSION

This amendment clarifies that foreign vessels which release hazardous substances in areas subject to United States jurisdiction are subject to liability under section 107 of CERCLA even where the foreign vessel itself is not subject to United States jurisdiction under any other law.

STATE AND LOCAL GOVERNMENT LIABILITY

SUMMARY

The reported bill amends section 107(d) to modify the potential liability of State and local governments that respond to emergencies created by the release of a hazardous substance, pollutant or contaminant generated by or from a facility owned by another person. State or local governments shall not be liable for costs and damages as a result of non-negligent actions taken in response to such emergencies.

DISCUSSION

Under current law, there may be disincentive for State and local governments to respond to emergencies covered by CERCLA because the same liability standards may be applied to these entities as is applied to private parties who are responsible for a spill or other release of a hazardous substance, pollutant or contaminant.

Under this amendment, when a State or local government takes an emergency action to abate a hazard on a non-negligent way, that government will not be subject to the liability provisions applicable to the parties that created the hazard.

CONTRACTOR INDEMNIFICATION

SUMMARY

This section amends section 107(e) of the Act to authorize the Administrator to provide indemnification to contractors who are engaged by the Agency or the States to respond to the release of hazardous substances, against potential liability that might arise as a result of their actions.

DISCUSSION

The potential for being held jointly and severally liable for injury or property damage under existing law may discourage competent contractors who would otherwise offer their services and expertise to respond to releases at specific sites.

Indemnification under this provision may cover claims for death, bodily injury and property damage, and may include the expenses of litigation that would arise as a result of the contractor's conducting activities under contract with the Agency or the States. Indemnification cannot extend to contractors where the injury or damage was caused by a negligent action of the contractor.

The decision to extend such indemnification is descretionary with the Administrator. Indemnification does not arise without a specific contractual arrangement that extends such protection.

NATURAL RESOURCE DAMAGE CLAIMS

SUMMARY

The reported bill clarifies and relocates from section 111(h) to section 107(f) existing language regarding the relative responsibilities of Federal and State natural resources trustees. In addition, the provision requires the promulgation of damage assessment regulations under section 301(c) of the Act not later than six months after enactment of this Act. The bill also amends section 111(e)(2) to provide that no money in the Fund/may be used to pay claims for natural resource damages in any fiscal year for which the Predident determines that all of the Fund is needed for responses to threats to public health.

DISCUSSION

Generally, the Federal or State trustee would perform assessments of damage to resources under its own jurisdiction. Federal trustees may perform assessments on behalf of States if they are rimbursed by States for performing the assessments. Assessments by Federal or State trustees using the damage assessment regulations being prepared by the Department of the Interior would continue to be entitled to a presumption of validity. While the amendment to section 111(e)(2) makes it possible that in any given year during this reauthorization period, no Fund moneys may be available to pay natural resource damage claims, responsible party liability for such damages under sections 106 and 107 continues, and claims against the Fund are delayed, not extinguished. This provision does not preclude either response or payment of response claims where the damage to natural resources constitutes a threat to public health (e.g. as in the contamination of drinking water aquifers).

CONTRIBUTION AND PARTIES TO LITIGATION

SUMMARY

The reported bill clarifies and confirms existing law governing liability of potentially responsible parties by adding a new subsection 107(e) providing:

- —that parties found liable under sections 106 or 107 have a right of contribution, allowing them to sue other liable or potentially liable parties to recover a portion of the costs paid; and
- —that parties who reach a judicially approved good faith settlement with the government are not liable for the contribution claims of other liable parties.

The amendment also provides that, where a civil or administrative action is underway, any related contribution or indemnification actions by defendants or third-party defendants may be brought only after a judgment has been entered or a settlement in good faith has been reached in the initial civil or administrative action.

DISCUSSION

It has been held that, when joint and several liability is imposed under section 106 or 107 of the Act, a concomitant right of contribution exists under CERCLA. *United States* v. *Ward,* 8 Chem. & Rad. Waste Litig. Rep. 484, 487–88 (D. N.C. May 14, 1984). Other courts have recognized that a right to contribution exists without squarely addressing the issue. See, e.g., *United States* v. *South Carolina Recycling and Disposal, Inc.,* 7 Chem. & Rad. Waste Litig. Rep. 674, 677 (D. S.C. February 23, 1984). This amendment clarifies and confirms the right of a person held jointly and severally liable under CERCLA to seek contribution from other potentially liable parties, when the person believes that it has assumed a share of the cleanup or cost that may be greater than its equitable share under the circumstances. In cases where the United States has been required to pay response costs as a generator or facility owner or operator, the United States may also seek such costs from other responsible parties.

The amendment should encourage private party settlements and cleanups. Parties who settle, or who pay judgments as a result of litigation, may attempt to recover some portion of their expenses and obligations in subsequent contribution litigation from parties who were not sued in the enforcement action or who were not parties to the settlement. Private parties may be more willing to assume the financial responsibility for cleanup if they are assured that they can seek contribution from others.

In addition to encouraging settlement, the amendment will help bring an increased measure of finality to settlements. Responsible parties who have entered into a judicially approved good faith settlement under the Act will be protected from paying any additional response costs to other responsible parties in a contribution action.

The amendment will also promote more expeditious management of litigation. Response sites often involve dozens or even hundreds of potentially responsible parties with differing types and degrees of involvement with the release. While the government may sue all potentially responsible parties, it need not sue all these parties. It may instead sue a limited number of parties to secure complete cleanup or all costs of cleanup under the principle of joint and several liability. Generally, the government seeks to obtain complete cleanup or to recover all of its costs. In some instances, where the government has sued major contributors of hazardous substances to a site but not lesser contributors, the parties named by the United States have in turn sued other potentially responsible parties in the same judicial action. In several cases this has resulted in massive and potentially unmanageable litigation.

The amendment provides that if an action under section 106 or section 107 of the Act is underway, any related claims for contribution or indemnification may not be brought until a judgment or settlement is reached in such action. This provision is intended to postpone counterclaims, cross-claims, and third-party actions; parties with counterclaims deemed compulsory under the Federal Rules of Civil Procedure shall pursue such claims after completion of the case-in-chief. This postponement allows the government to limit the number of parties and claims in its actions, so that litigation may be resolved in a more efficient and expenditious fashion. This provision is not intended to have any retroactive effect on third-party actions that were filed prior to the enactment of this amendment. District courts should carefully manage cases filed prior to enactment in a way that avoids prejudicing the government's ability to resolve its cases expeditiously and without the significant delays and expenses that third-party litigation may create.

As with joint and several liability issues, contribution claims will be resolved pursuant to Federal common law. Courts are to resolve such claims on a case-by-case basis, taking into account relevant equitable considerations.

FEDERAL LIEN

SUMMARY

The reported bill amends section 107 to add a new subsection (m) to enable the United States to recover its response costs through an in rem action against the real property that is the subject of the response action. Such protection for the United States will also enable it to recover the increase in land value resulting from the response action, thus preventing unjust enrichment of the property owner.

DISCUSSION

The amendment provides that all costs and damages for which a person is liable to the United States under section 107(a) of the Act shall be a lien on all real property affected by the response action. The lien arises at the time the United States first incurs response costs, but is not perfected as against purchasers, security interest holders, and judgment lien creditors (all as defined in the tax lien statute, 26 U.S.C. section 6321 et seq.) until notice of the lien is recorded or filed. The notice provision does not apply with respect to any person who knows or should have known that the United States has incurred response costs.

The federal lien does not have any special priority over the perfected security interests of other creditors. Instead, it has priority over other secured creditors only as of the date they have constructive or actual notice of the creation of the lien. Nonetheless, the lien provides protection to the United States in instances where the owner of the land on which a response action has occurred becomes insolvent or cannot be found. The federal government retains the right to proceed in personam against all persons liable for response costs and damages under section 107(a).

The creation of this lien does not itself in any way make the United States a liable party under CERCLA or any other laws, nor does it affect any rights the United States may enjoy under other Federal or State laws.

Direct Action

SUMMARY

This amendment clarifies certain aspects of existing financial responsibility requirements and provides for direct action against guarantors in appropriate cases.

Specifically, the amendment: (1) provides claimants in appropriate circumstances with the right of direct action against guarantors (defined as persons who provide evidence of financial responsibility to an owner or operator, (2) permits a guarantor when subject to a direct action suit to invoke as a defense the terms and conditions contained in the guarantor's policy of insurance with the owner or operator, (3) confirms, without diminishing any other statutory, contractual or common law liability of a guarantor, that the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to a particular owner or operator, and (4) authorizes the Administrator to establish appropriate rules and defenses with respect to such actions.

DISCUSSION

The amendment modifies an existing right of direct action against a guarantor. With direct action, a claimant may file a lawsuit naming an insurance company or other entity serving as guarantor as a defendant in the case. Absent the right of direct action, an insured party would file an action only against the person who allegedly had caused the injury, and it is that person's liability which is litigated in the action. The insurer's initial obligation is to its insured, with whom the insurer has a contract. If the insured is found liable, then the insurer is obligated to make payment to the insured in accordance with and subject to the terms of the contract.

In some instances, however, an injured party, who is the intended beneficiary of the financial responsibility requirements in CERCLA, may not be able to bring an action against the owner or operator to recover from that owner or operator or their guarantor. There are two specific circumstances where this may occur. First, it is possible that a claimant may not be able to obtain court jurisdiction over the owner or operator. Second, and perhaps more likely, the owner or operator either voluntarily or involuntarily may be a debtor in bankruptcy. These two circumstances include cases where an owner or operator may be identified and subject to court jurisdiction, but clearly unlikely to be solvent (i.e., capable of paying the judgment) at the time the litigation is resolved. The amendment would afford a claimant the right of direct action in both instances.

Policy terms and conditions

In a direct action lawsuit, the amendment permits the guarantor to invoke not only the defenses that would have been available to the owner or operator, i.e., acts of God, acts of war, unrelated third party acts in limited circumstances, but also the terms and conditions that the insurer had agreed upon with the insured in their policy of insurance. By authorizing a guarantor to invoke these rights and defenses, this amendment should foster the development of a competitive marketplace for insurance certified as evidence of financial responsibility. A competitive marketplace should lead to the greater availability of reasonably priced insurance certified as evidence of financial responsibility. This, in turn should encourage increased compliance with CERCLA's financial responsibility provisions (and the availability of direct action) which will ultimately benefit the claimants by providing them with greater financial protection.

In addition, a major goal of the financial responsibility requirements is to enlist insurers to provide additional policing and incentives to monitor the behavior of their insureds. The preservation of an insurer's policy terms and conditions vis-a-vis its insured may assist in meeting this objective. It is often policy terms and conditions, as well as inspection and rate-making, that form the basis of the insurer's ability to influence the insured to act carefully and responsibly.

At the time of enactment of CERCLA, there was some concern that a guarantor might use its policy terms and conditions to diminish the risk it was undertaking, and therefore the value of the financial responsibility it had provided. We hope the cause for this concern will be minimized by several factors. One factor is the intensely competitive nature of the property-casualty insurance market. Owners and operators should have little incentive to purchase insurance certified as evidence of financial responsibility that does not provide meaningful coverage when insurance that would provide valid protection for their assets is readily available. Moreover, insurance companies are subject to comprehensive regulation at the State level so that, if this problem ever did arise, there would be an available procedure to correct it promptly. Nevertheless, as a further safeguard the amendment authorizes the Environmental Protection Agency to specify policy or other contractual terms, conditions or defenses which EPA deems to be necessary or to be unacceptable in establishing evidence of financial responsibility.

Liability limits

The amendment also clarifies and defines more precisely the ultimate liability of a guarantor when providing evidence of financial responsibility. As written, present section 108(d) of CERCLA could be interpreted so as to expose an insurer to the full amount of the risk regardless of the insurer's policy limits should an insurer be found to have acted not in good faith. Section 108(d) does not define the term "good faith" nor does it specify to whom the guarantor must act in good faith. To cure this uncertainty, the amendment specifies that a guarantor's policy limits shall be binding, but that nothing in CERCLA is intended to limit any other statutory, contractual or common law liability of a guarantor, including an insurer's traditional common law obligation to act in good faith toward its insured. Moreover, the amendment also makes explicit that the liability limit of a guarantor in any specific instance is to be determined by the aggregate amount which the guarantor has provided as evidence of financial responsibility to the particular owner or operator involved in the matter.

While a guarantor's liability under CERCLA is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under CERCLA, this section does not limit the guarantor's liability to the amount for which financial responsibility must be demonstrated. For example, if the owner or operator secured a guaranty for an amount greater than the amount required pursuant to section 108, the guarantor's liability is limited by the amount of the guaranty, not the amount required pursuant to section 108.

Evidence of financial responsibility

Finally, the amendment makes explicit and uniform how evidence of financial responsibility is to be provided. First, the amendment requires that evidence of financial responsibility is to be provided in accordance with regulations promulgated by the Administrator of EPA. Thus, for example, the mere purchase of insurance by an owner or operator is not sufficient, in and of itself, to meet the financial responsibility provisions of CERCLA. Rather, in order to meet the statutes' requirements, an owner or operator must obtain from a guarantor insurance or some other form of financial guarantee that qualifies as evidence of financial responsibility pursuant to the EPA's regulations. Second, the amendment provides that evidence of financial responsibility may be provided by any one, or any combination, of the following: insurance, letter of credit, guarantee, surety bond or qualification as self-insurer.

VICTIM ASSISTANCE DEMONSTRATION PROGRAM

SUMMARY

S. 51, as reported, establishes a five-year demonstration program of assistance to victims of exposure to hazardous substances released into the environment, to be operated in five to ten areas of the country.

The bill adds the cost of grants under this program to the list of permissible uses of the Fund, and specifies that only the general Revenue/contribution to the Fund is available for this purpose.

This provision adds a new subsection (m) to section 111 of the law. Subsection (m)(1) sets out the eligibility criteria which must be met by an area in order to be nominated by a State to EPA for participation in the program. The prerequisites for eligibility are:

First, a health assessment or other health study required under section 104(i) of the Act must have been performed.

Second, the health assessment or other health study must contain certain information. Specifically, the study must indicate that:

1. There is a disease or injury for which the population of such area is placed at significantly increased risk as a result of a release of a hazardous substance;
2. Such disease or injury has been demonstrated by peer reviewed studies to be associated (using sound scientific and medical criteria) with exposure to a hazardous substance; and

3. The geographical area contains individuals within the population who have been exposed to a hazardous substance in a release.

Any area which in the judgment of a State meets these criteria may be nominated by the State in which it is located to the Environmental Protection Agency for selection.

Selection is to be made by the President or his delegee in its sole discretion. However, selections must be made taking into account the experience of the State and local governments in administering programs dealing with hazardous substances, as well as the representative nature of the hazardous substance releases and exposure in terms of the identities and toxic characteristics of the substances found, the manner and degree of exposure, and the seriousness and duration of the diseases or illnesses caused.

The President shall select no fewer than five and no more than ten areas for participation in this program, assuming that at least that number of applications is received. If no applications are received, no grants will be made. Grants must be made in different States, to the extent possible. Assuming that several States submit applications, the amendment directs the President to make grants to areas located in at least five different States. The amendment also specifies that each grant is to made for not less than $1 million per year and not more than $10 million per year.

No area or class of individuals may receive assistance from a program established under this subsection if there is a solvent responsible party who may be liable under section 107 and who is already providing medical assistance comparable to the assistance available under this program.

Paragraph (5) specifies the elements that must be included in any State program operated under this subsection. A participating State shall operate, for at least three years and not more than five years, a program which provides for the area selected the following assistance:

1. Medical screening examination and testing as necessary to determine the presence in individuals of the disease or injury for which the population of the geographic area is at significantly increased risk;
2. For persons with no present symptoms of such disease or injury, a secondary group medical benefits insurance policy for the costs of periodic medical screening to determine the presence of such symptoms;
3. For persons with present symptoms of such disease or injury, or who develop such symptoms, reimbursement of past out-of-pocket medical expenses for such disease or injury not already recovered, and a secondary group medical benefits insurance policy for the costs of treatment associated with such disease or injury.

The insurance benefits available under this assistance program are to be secondary to and nonduplicative of benefits available under other insurance policies running in favor of an individual, and to any benefits from public programs for which an individual is eligible. Initial eligibility for benefits under this program is to be determined as of thirty days prior to the date a State applies for participation in this program. If at a future date a person who was initially ineligible becomes eligible, secondary insurance assistance should be made available under this program. Persons initially eligible who at a future date become ineligible may receive insurance coverage only to the extent that it is nonduplicative of other benefits. Assistance under this program is provided on the condition that any payment received will be repaid to the Fund out of the proceeds of any award from or settlement with a responsible party.

The amendment requires the submission of several studies to evaluate this program. The President is required to submit annual reports to the Congress, beginning in January, 1987. Each State which participates in this demonstration program must submit to the President and the Congress a report on its program by January, 1990.

DISCUSSION

This amendment establishes on a demonstration basis a program of medical assistance to victims of exposure to hazardous substance releases into the environment. This approach is an attempt to develop information required to make a reasoned judgment on the extent of need for a broader victim compensation program and the workability of an administrative assistance program.

The subject of administrative compensation for the victims of hazardous substances and toxic chemicals is one which has been before the Congress since the mid-1970's, when the Clean Water Act was amended to provide a response program for environmental emergencies. The oil and chemical Superfund bill reported by the Committee on Environment and Public Works during the 94th Congress (which passed the Senate, but was not enacted), S. 2900, contained an administrative compensation program, as did the Superfund bill reported from this Committee in 1980. When the 1980 legislation was brought to the Senate floor, however, an agreement was reached which eliminated the victim assistance program and required a study of the adequacy of existing remedies to compensate persons injured by exposure to the release of toxic substances into the environment.

The study requirement is contained in section 301(e) of the current law. Pursuant to that section, three representatives of each of four major legal organizations were appointed to form what became known informally as "The 301(e) Study Group". The four organizations contributing members to the study group were the American Bar Association, The American Law Institute, the American Trial Lawyers Association, and the National Association of Attorneys General.

The Study Group submitted its report to the Congress on July 1, 1982. Having been charged with the responsibility of determining "the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances to the environment," the Group made ten recommendations. One of these was that a system of administrative compensation be established:

First Recommendation: Federal Administrative Compensation and State Judicial Remedies:

> In light of the limited availability and the inadequacy in many situations of existing remedies, and particularly in light of the inadequacy of the present tort system to deal with relatively small claims, the Study Group recommends a remedial program that is intended to provide means of recovery for victims of exposure to hazardous wastes, utilizing both administrative and judicial remedies, as may be appropriate.
>
> In broad outline, the Study Group recommends a two-tier system of remedies. The first tier, which is expected to be the part of the system most heavily relied on by persons injured by exposures, will provide an administrative compensation remedy without a showing of fault. The administrative compensation scheme would be established by federal legislation, but would be operated largely by the states pursuant to federal law. Its major purposes would include the provision of limited compensation to meet the economic and medical needs of persons injured in a manner which is more prompt and less costly than tort litigation. Such a compensation system would also provide a useful method of cost allocation and sharing, and a socially responsible method of internalizing the emerging costs of industrial and technological development.

The amendment contained in S. 51 does not fully implement the recommendation of the Study Group. Rather, it provides $30 million per year to selected States to implement the recommendation in specific areas which contain individuals who are at statistically significant increased risk of illness from exposure to hazardous substances. The amendment provides no economic compensation. Although the grants for such programs will be made available from the general revenue contribution to the Superfund, the actual establishment of the assistance programs will be by the States themselves.

Throughout the course of this debate competing assertions have been made that on the one hand, such assistance is not needed, and on the other hand that a program of victim assistance would overwhelm the resources of the Fund. The approval of a demonstration program reflects a recognition that this is an area of uncertainty, and more information is needed. The amendment focuses on geographic areas which could provide such information in two ways.

First, the amendment sets out specific area eligibility criteria. Only an area for which a health assessment or other health study has been performed pursuant to section 104(i) of CERCLA and which contains specified information, is eligible. A health assessment, to be performed at every site on the National Priorities List under section 1046i, is defined in that section as follows:

> The term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential sus-

> ceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

The Agency for Toxic Substances and Disease Registry is to specify in its health assessments the geographic area in which such exposures are occurring.

The requirements that area designation is to be based on information contained in a health assessment is to limit eligibility to those areas where populations have been placed at a statistically significant increased risk as a result of exposure to a hazardous substance released into the environment. There is a likelihood that areas around National Priorities List sites will be a focus of this program, due to the requirements that health assessments be conducted at each of these sites.

The amendment requires that the health assessment indicate that the population of a particular area is at significantly increased risk as a result of exposure to a hazardous substance release. The term "significantly" means statistical significance. It does not add a legal criterion for eligibility but rather clarifies the kind of risk assessment information that must be in a health assessment for purposes of area eligibility. Information with this degree of reliability is expected to be in a health assessment or other health study in any case.

The State in which such an area is located is to apply for participation in the program after its review of the health assessment or other health study performed under section 104(i) for compliance with the eligibility criteria set forth in subsection (m) (1).

Second, the selection criteria which are to guide the President's grant decisions will focus this program on geographic areas with real need and provide a useful body of information. Paragraph (2) directs the President to take into account the experience of State and local governments in administering toxic chemical regulatory programs. States with such experience as to be preferred, in part, because of their familiarity with the dangers of such substances to human health. The President is also directed to take into account the seriousness of the health threat posed by exposure to hazardous substances in an area, as well as the representative nature of the hazardous substances to which individuals are exposed. This will assure that the information developed will have broad applicability to situations which exist in other States, so that if necessary, solutions can be sought to address the most serious and most prevalent problems.

The amendment directs States to apply to the Environmental Protection Agency for participation in this program. This is a purely ministerial function. The authority to select participating States is vested in the President. The President should delegate this authority to a federal agency with experience in health-related activities. The Committee expects the Agency for Toxic Substances and Disease Registry to be consulted, at a minimum, about grant decisions.

However, selection of specific participating States is in the discretion of the President or the President's delegee. The approval or denial of a specific application is not subject to judicial review, except to the extent the President fails to select at least five such applicants, as required by section 111(m)(2).

Paragraph (5) describes the elements that must be included in any State program of assistance established under this subsection. Each State program will provide medical screening to all members of the population defined to be at increased risk of a disease or injury in the health assessment. The purpose of this analysis is to identify excess disease or injury associated with exposure to a hazardous substance already present in the population at risk, and to set in motion for those without present symptoms a process through which such a disease or injury can be detected at an early stage.

Two different forms of medical assistance are available under a State's program. For persons with no present symptoms, a secondary group medical benefits policy will provide for periodic medical screening. For persons who have symptoms of such a disease or injury, the State will provide a secondary group medical benefits policy to cover costs of treatment. Individuals in this category will also receive from the State program reimbursement for past medical costs associated with that illness, if not paid by any other source.

This general approach using an insurance mechanism was suggested in the Keystone Toxic Exposure Compensation Report of January, 1985. The group which participated in this project over many months last year represented interests from academia, industry, citizen and environmental organizations, labor, medical and legal professionals, and federal and state officials.

The Keystone group concluded "that an administrative system for hazardous substance exposure would best be directed at immediate welfare needs that are public health concerns. While there are other possible goals or objectives related to this issue, such as encouraging conduct to prevent such exposures, it was decided that the immediate public health needs of potentially affected individuals should be the principal objective in the system being suggeted".

With respect to the use of insurance to address long-term health needs, the Keystone group saw this approach as having some benefits for all parties, and recommended the implementation of such an administrative compensation system on a trial basis.

The reported bill will provide experience in this regard. Although the provision specifies the insurance benefits that must be provided by a State demonstration program of assistance, it does not require the use of any particular system of insurance. States will be free to establish a mechanism for providing the specified benefits which seems most appropriate given the geographic area selected, and the State's existing health care delivery systems. Such mechanisms could include group health organizations, administrative services only contracts, risk retention plans, or other arrangements to deliver care on a group basis.

FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES

SUMMARY

The reported bill amends section 111(e)(3) of the Act to provide that the fund can be used to pay for alternative water supplies in cases involving federally owned facilities, where groundwater contamination exists beyond the Federal property boundary and the federally owned facility is not the only potentially responsible party. This would include reimbursement of funds already spent by a municipality.

DISCUSSION

Current law prohibits the use of funds from Hazardous Substances Response Trust Fund for remedial action at sites where the potentially responsible parties include an agency or department of the Federal Government. Congress intended that costs at such sites should be born by the agencies responsible through appropriated funds, rather than from the trust fund derived from taxes on the chemical manufacturing industry.

This prohibition has caused considerable hardship at many sites across the Nation because Federal agencies have been slow to respond in cases where they are responsible. The Committee has been made aware of the problems at specific sites which have required immediate response with State and local resources to provide a alternative water supplies. In cases such as New Brighton, Minnesota, responses to protect the publc health have required the expenditure of several million dollars by a local government with no opportunity to recover these expenses from the responsible Federal agency in the foreseeable future.

The language of this section would make a limited modification in the current prohibiton. It would allow use of monies from the fund to respond at sites where the potentially responsible parties include an agency of the Federal government but also include other non-Federal parties. At such sites, the fund may be used to provide alternative water supplies and to reimburse municipalities to the extent that they have incurred costs to make available alternative water supplies.

STATUTE OF LIMITATIONS

SUMMARY

The reported bill strikes the current statute of limitations language in section 112(d) of the Act and adds a new subsection to section 133 setting out a revised statute of limitations. Under this new provision, the statute of limitations is (a) for recovering the cost of response, 6 years after the date of completion of the response action; (b) for natural resource damages, 6 years after the date damage assessment regulations are promulgated under section 301(c) or 3 years after the discovery of the loss and its connection with the release, whichever is later; (c) for any other damages, 3 years after discovery of the loss and its connection with the release or 3 years after enactment, whichever is later, (d) for contribution actions, 3 years after entry of judgment or good-faith settlement; and (e) for subrogated rights under section 112, 3 years after payment of the claim.

DISCUSSION

CERCLA currently includes no explicit statute of limitations for the filing of cost recovery actions under section 107. There are differing interpretations concerning the time period within which cost recoveries must be filed. Consistent with its position under section 311 of the Clean Water Act, the United States has maintained that there is no statute of limitations in the law and that if one is applicable, it begins to run six years from the completion of site response.

This amendment establishes a six-year statute of limitations for the filing of cost recovery actions. The statutory language also specifies that cost recovery actions can be initiated upon the expenditure of Federal funds. The six-year period is the same as the period established by a clear line of cases for the parallel provisions in section 311 of the Clean Water Act. It will assure that no cost recovery actions will be precluded by any shorter time limit that responsible parties may raise, because of any potential ambiguities in the statute.

Nevertheless, there is a need to file cost recovery actions in a timely fashion, to assure that evidence concerning liability and response costs is fresh, to help replenish the Fund, and to provide some measure of finality to affected responsible parties. Because response actions may extend for a number of years, the government is not precluded from commencing an action for recovery of costs at any time after such costs have been incurred. When the government brings an action on an operable unit of response and that matter is resolved by judgment, the government is not precluded from bringing a subsequent action regarding a subsequent response.

For purposes of recovery of costs by the Federal Government under this section, the response action is regarded as completed upon completion of operation and maintenance activities funded by the Federal Government.

JUDICIAL REVIEW

SUMMARY

This section revises the provisions of section 113(a) governing the judicial review of regulations promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

New section 113(a)(1) provides that an application for review of a CERCLA regulation may be filed in the U.S. Circuit Court for the District of Columbia or in the U.S. Court of Appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation within one hundred and twenty days after such regulation is promulgated. Under current law, judicial review may only be had in the U.S. Circuit Court of Appeals for the District of Columbia, and applications for review must be filed within ninety days.

New section 113(a)(2) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which a regulation is to be reviewed when applications for review have been filed in two or more courts of appeals.

Following the selection of a single court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the Agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application for review has been filed would retain the power to transfer the case to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

DISCUSSION

The principal purpose of this amendment is to allow the filing of applications for review of CERCLA regulations in U.S. Courts of Appeals other than the U.S. Court of Appeals for the District of Columbia, which currently has exclusive jurisdiction over such applications.

The justification for centralized judicial review of environmental regulations is that it eliminates the possibility of conflicting interpretations of the law in different circuits and allows a single court to develop expertise in this complex area of the law. However, in the judgment of the Committee these advantages, to the extent they exist, are insufficient to offset the disadvantages of centralized judicial reivew, which include inconvenience to litigants who do not reside in Washington, D.C. and an unwarranted concentration of power in a single tribunal, which may in turn generate undersirable political pressures on the appointment of judges. Centralizing review in a single court may also deprive the law of diverse views on complex legal issues, and as a result may make the task of the Supreme Court more difficult.

Although other Circuit Courts of Appeal may not possess as much technical expertise as the D. C. Circuit, the responsibility of a Court of Appeals is to review regulations for conformity with law, not to undertake technical review of regulations and the Committee has no reason to believe that other Courts of Appeal lack competence to review regulations promulgated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The random selection process created by section 107(a)(2) is intended to avoid the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same Agency action. This process does not preclude any court of appeals from exercising its inherent power of transferring an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

The amendment also changes the period within which an application for review of any Agency action must be filed from ninety to one hundred and twenty days. In view of the seriousness of the possible consequences of a failure to challenge an action of the Administrator within the prescribed time period, persons who will be directly affected by a regulation should have ample opportunity to assess the consequences of such regulation and file an application for review. A period of one hundred and twenty days provides such an opportunity.

PREENFORCEMENT REVIEW

SUMMARY

The reported bill amends sections 113 and 106 to clarify the process for judicial review of government decisions on the appropriate extent of response and the liability of responsible parties. The amendments explicitly provide that:

- —judicial review of all Presidential decisions concerning response is on the administrative record;
- —there is no pre-enforcement review of section 106 administrative orders or section 104 response actions or orders; and,
- —administrative orders may be subject to judicial review once response action is completed.

DISCUSSION

Record review

Although CERCLA does not explicitly state how decisions concerning response actions will be judicially reviewed, courts have suggested that review of decisions concerning the response, like other administrative decisions, is on the basis of the administrative record. This amendment clarifies and confirms that judicial review of a response action is limited to the administrative record and that the action shall be upheld (and all government response costs shall be awarded) unless the action was arbitrary and capricious or otherwise not in accordance with law.

Reliance on an administrative record helps assure that the basis for the response decision is clearly articulated and open to scrutiny by the public and responsible parties. Limiting judicial review of response actions to the administrative record also expedites the process of review, avoids the need for time-consuming and burdensome discovery, and assures that the reviewing court's attention is focused on the information and criteria used in selecting the response.

If major deficiencies are shown to exist in the administrative record that has been assembled, judicial review of the response in an enforcement or cost recovery action may be de novo, i.e., open to the introduction of evidence by all parties. Existing administrative law principles will govern whether supplementary materials explaining or clarifying the record may be introduced at trial; however, under most circumstances, judicial review should be limited to the administrative record itself.

Pre-enforcement review

Response actions or orders under section 104 and orders under section 106 may be subject to judicial review at the time the government seeks cost recovery or acts to enforce the order and collect penalties for noncompliance. This amendment clarifies and confirms that response actions and orders are not subject to judicial review prior to that time.

As several courts have noted, the scheme and purposes of CERCLA would be disrupted by affording judicial review of orders or response actions prior to commencement of a government enforcement or cost recovery action. See, e.g., *Lone Pine Steering Committee* v. *EPA*, 22 Env't Rep. Cas. (BNA) 1113 (D. N.J. January 21, 1985). These cases correctly interpret CERCLA with regard to the unavailability of pre-enforcement review. This amendment is to expressly recognize that pre-enforcement review would be a significant obstacle to the implementation of response actions and the use of administrative orders. Pre-enforcement review would lead to considerable delay in providing cleanups, would increase response costs, and would discourage settlements and voluntary cleanups.

Review of orders and reimbursement of costs

The changes relating to judicial review both clarify and confirm the existing process. The amendment also establishes new procedures for reimbursement of certain response costs and provides opportunities for judicial review of administrative orders once the response action required by the order is completed.

Under the reported bill, potentially responsible parties may request reimbursement from the Fund for costs incurred in responding to an order. If the President refuses to grant all or part of a petition for reimbursement, such parties may file an action in district court seeking reimbursement. Potentially responsible parties may obtain reimbursement, plus interest, if they can show that:

—they are not liable, and that the costs which they incurred in responding to the order were reasonable; or

—the response action ordered by the President was arbitrary and capricious or otherwise not in accordance with the law.

This provision will foster compliance with orders and promote expeditious cleanup, by allowing potentially responsible parties who agree to undertake cleanup to preserve their arguments concerning liability and the appropriateness of the response action. In addition to having an opportunity for judicial review as set forth in this section, recipients of section 106 orders have opportunities to participate directly in the process for selecting the appropriate response action and may seek reimbursement of response costs from other potentially responsible parties under section 107 of the Act.

The new procedures set forth in this amendment are designed simply to increase the incentive for potentially responsible parties to undertake response actions. This amendment is not necessitated by any constitutional infirmity of section 106, as enacted in 1980, which already affords adequate protection of potentially responsible parties' due process rights.

NATIONWIDE SERVICE OF PROCESS

SUMMARY

The reported bill amends section 113 of CERCLA to clarify and confirm that nationwide service of process is available under CERCLA.

DISCUSSION

Defendants in some actions brought personal jurisdiction through out-of-state service because of a lack of minimum contacts. This amendment expressly confirms that the United States may serve a defendant in any district where the defendant resides, transacts business, has appointed an agent for service of process, or may otherwise be found. Although service of process has been implicitly available under CERCLA, this amendment makes the availability of such service explicit, to avoid future arguments on the issue and to expedite government enforcement actions.

PREEMPTION

SUMMARY

The reported bill strikes section 114(c) of the Act to clarify that States are not preempted from imposing taxes for purposes already covered by CERCLA.

DISCUSSION

Clarification of section 114(c) appears desirable because of the litigation that has arisen from the original language in the statute. The litigation has been focused on the right of States to tax those substances which are taxed under the Federal Superfund law. To date, all decisions in State courts (including recent State Supreme Court rulings) have found that the Federal Superfund law does not preempt the rights of the States to raise taxes from these substances or through other special taxes. This litigation could continue for years. Any cloud of uncertainty over the legitimacy of these taxes should be removed at the earliest possible time.

It is widely recognized that States must develop their own taxes to meet their responsibilities for the State share of the cleanup costs at Superfund sites. In addition, States have responsibilities for managing and cleaning up hazardous materials not covered by the Federal program. Clarification of section 114(c) will allow the State to move forward and develop the tax mechanisms necessary for meeting the growing funding needs for response to hazardous substance releases and participation in the Superfund program, as well as for maintaining effective State hazardous waste programs.

The primary effect of the amendment will be to remove a potential barrier to the creation of State superfund programs. The amendment may result in an increase in the number and pace of hazardous substance response actions undertaken or partially funded by States, since States will be able to raise funds to assist such hazardous substance response.

Federal Facilities Concurrence

SUMMARY

This section amends section 115 of the Act to provide that the Administrator of the Environmental Protection Agency must concur in the selection of cleanup actions to be taken for Federal facilities. States that have entered into cooperative agreements with the EPA must also concur in the selection of cleanup actions. In addition, the administrative order authority of section 106 is statutorily delegated to the Administrator with respect to Federal facilities.

DISCUSSION

Federal agencies have not always been responsive to the problems of hazardous sbustance releases, and adequate corrective measures have not been taken at many Federal facilities. This has particularly been a concern for the Department of Defense facilities, for which the President by Executive Order delegated all authorities under CERCLA to the Secretary of Defense. This new section requires Federal agencies to respond to hazardous substance releases and assures that EPA retains the lead responsibility for cleanup actions. For Defense facilities, or others for which such delegation occurs, the EPA must concur in the selection of an adequate remedial action, and can order appropriate corrective action.

Federal Facilities Compliance

SUMMARY

New section 117, added by the reported bill, requires the Administrator to compile a publicly-accessible "Federal Agency Hazardous Waste Compliance Docket" containing information on the location, nature and extent of hazardous substance use, storage or disposal of Federal agencies, developed under section 3016 of the solid Waste Disposal Act. The Administrator is required to take steps to assure that each agency conducts a preliminary assessment of such facilities within 18 months of enactment, and that following this assessment each facility is evaluated, in accordance with criteria established under CERCLA section 105 for priorities among releases, for potential enclusion on the National Priorities List.

Within one year after inclusion on the National Priorities List, each agency is require, in consultation with the Administrator, to commence a remedial investigation and feasibility study (RI/FS). No later than six months after completion of the RI/FS the Administrator is required to enter into an agreement with each agency providing a schedule for the expeditious cleanup and arrangement for long-term operations and maintenance of each facility. Each agency is required to complete cleanup as expeditiously as practicable after the date of the interagency agreeement and to include in its annual budget submissions to the Congress a request for funding adequate to complete cleanup, and a review of alternative agency funding which could be used to provide for the costs of cleanup. Each agency responsible for compliance shall furnish an annual report to the Congress detailing its progress in implementing the requirements of this new section.

New section 117(d) prohibits the delegation of authorities vested in the Administrator by this section to anyone other than employees of the EPA. New section 117(e) reaffirms that all provisions of CERCLA applicable to private facilities are applicable to Federal agencies in the same manner and to the same extent.

DISCUSSION

The principal purpose of this amendment is to improve Federal agency accountability and EPA oversight and regulatory authority with respect to hazardous waste sites on Federally-owned or controlled facilities or property. This section establishes a schedule for reporting and cleanup of sites owned or operated by the Federal government, formalizes EPA oversight over executive agencies, and reaffirms that all CERCLA guidelines, rules, regulations, and procedures applicable to private facilities are also applicable to Federal agencies in the same manner and to the same extent.

One of the purposes of this amendment is to encourage Federal agencies managing these contaminated sites to identify the resources needed for response. Such resources can then be sought through the appropriations process, rather than forcing the agencies to meet these needs by diverting funds from other objectives. The reported bill requires agencies to submit information on funding for remedial action. Where possible, agencies should anticipate the schedule and other requirements of this new section, and seek special funding for the preparation of the RI/FS and other preparatory work.

The intent of new section 117(c)(3) is not to specify items that must appear in the official Budget submitted by the President. Rather, each agency with a contaminated site needing remedial action must submit to the authorizing and appropriations committees of the Congress documentation of what funding is needed to complete the remedial action and a review of alternative agency funding which could be used for such purposes. The Agency must also provide a statement of the hazard which the facility poses to human health, welfare and the environment. This statement shall also identify the specific consequences of failure to begin and complete remedial actions.

Citizen Suits

SUMMARY

The reported bill adds a new section 118 to CERCLA, providing a right for citizens to sue in Federal court to enforce standards, regulations, conditions, requirements and orders under the Act and to seek the performance of nondiscretionary duties under the Act by the President or delegees of the President. Prior to bringing such suits in Federal district court, a citizen is required to give 90 days notice to the State and the Federal government, and, where appropriate, to the alleged violator. No action may be brought under this section if the State or Federal government is diligently prosecuting an enforcement action under CERCLA or the Solid Waste Disposal Act for the same violation. Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts, under new section 118(c). Conversely, the President or a delegee may intervene as a matter of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party. The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

DISCUSSION

A citizen suit provision has been a standard feature of each of the major environmental laws since the early 1970's. The reported bill adds such a provision to the Superfund law. Under this new authority, modeled on the citizen suit provisions of the Clean Air, Clean Water, and Solid Waste Disposal Acts, individuals may bring actions in Federal court against private parties to abate violations of CERCLA, and against Federal officials to seek performance of nondiscretionary duties under the Act.

The language of new section 118 makes clear that a citizen suit cannot be used to seek pre-enforcement judicial review of any remedial action or enforcement order. This is consistent with the clarification made elsewhere in the bill, eliminating pre-enforcement review of administrative orders.

All penalties awarded pursuant to this amendment, which allow courts in which citizen suits are brought ". . . to apply appropriate civil penalties under this Act," are to be paid into the United States Treasury. Litigation of any such request or the granting of any such award will not, in any way, limit or preclude the right of the United States to seek or obtain the payment of penalties arising out of the same or related violations, except that the maximum penalty to be paid for each violation shall not exceed that provided for in the relevant section.

The conditions placed on such suits are intended to assure that they will complement, and not interfere with, Federal regulatory and enforcement programs. Citizen suits under these amendments may only be initiated 90 days after the citizen has notified the President, the State in which the alleged violation occurred, and the alleged violator. If the United States or a State has commenced and is diligently prosecuting an action under this Act or the Solid Waste Disposal Act, an action under the new provision cannot be filed. It is recognized that 90 days is not sufficient time for the Agency to conduct all studies necessary to initiate an enforcement action. Nevertheless, based on current experience, this should provide enough time for the Agency to conduct an investigation satisfactory to the private parties, so that EPA and the private parties should be able to work out a mutually acceptable way to proceed.

A determination as to whether the Administrator or a State "has commenced and is diligently prosecuting" an action is, by necessity, a case-by-case detemination. "Commencement" of an action generally means having actually filed suit or having issued an administrative order. An action has not been "commenced" in a case that is merely under investigation or a case where only notice or warning letters have been sent . The scope of the relief being sought by the Administrator and the opportunity for citizens to intervene are factors to be considered when determining if a case if being "diligently prosecuted".

The reported bill gives a clear right of intervention to the Administrator. For example, if the Administrator believes a citizen suit under the provision is not being prosecuted in the public interest, he may exercise the right to intervene in such action and seek from the court restrictions or conditions upon the citizens suit, in order to assure that the means of prosecution and the relief sought are in the public interest. EPA and the Department of Justice are responsible for taking necessary steps to assure orderly and consistent development of cases law and legal interpretations, and technical consistency for enforcement. In view of the Agency's expertise in this area, courts will accord some deference to the Agency's technical findings concerning the nature and extent of the violation. The Administrator and the Department of Justice are encouraged to file amicus curiae briefs with the court, where appropriate.

These amendments provide any person with a statutory right to intervene as a party to suits filed by the Administrator or by a State under CERCLA or the Solid Waste Disposal Act, "unless the President or the State shows that the applicant's interest is adequately represented by existing parties." The rules on intervention are intended to assure that persons living in close proximity (persons potentially at risk) to the subject of the government-initiated action will be able to intervene as a matter of rights unless the President or the State can demonstrate that those persons' interests are being adequately represented. The purpose of the amendments is to make it easier for individuals who may be assuming an imminent and substantial risk as a result of the defendant's activities to participate in these suits, particularly in fashioning the appropriate remedy for eliminating the risk. By requiring the government to demonstrate that the applicant's interests are already represented, this amendment reverses the normal presumption of Rule 24 of the Federal Rules of Civil Procedure.

New section 118(e) authorizes the court to award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party or parties. As with similar provisions in other environmental citizens suit laws, this will encourage private enforcement by allowing such awards to private plaintiffs where the court determines that the bringing of the action was in the public interest, while discouraging frivolous suits by allowing costs to be awarded to defendants in appropriate cases. Where the United States is a prevailing defendant, costs of litigation include a reasonable calculation of costs attributable to Justice Department and other personnel involved in the defense.

Subsection (f) of the new citizen suit provision makes it clear that nothing in this Act restricts or modifies the rights of any person under Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief.

ADMINISTRATIVE CONFERENCE RECOMMENDATION

SUMMARY

This section would establish a congressional finding that Recommendation 84-4 of the Administrative Conference of the United States is generally consistent with the goals and purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and would direct the Administrator of the Environmental Protection Agency (EPA) to consider such Recommendation and implement it to the extent that so doing will expedite the cleanup of hazardous substances which have been released into the environment.

DISCUSSION

Recommendation 84-4 of the Administrative Conference of the United States consists of a series of steps that the EPA might take to encourage and facilitate negotiated private party cleanup of hazardous substances, in those situations where negotiations have a realistic chance of success. The purpose of encouraging such negotiated cleanups is to accelerate the rate of cleanup while reducing its expense by tapping the technical and financial resources of the private sector. However, the greater emphasis on negotiated cleanups that is recommended is not to replace or diminish an aggressive enforcement policy, but rather to complement it.

Implementation of the Administrative Conference recommendation does not require amendment to CERCLA, as it is also the belief of the Committee that Recommendation 84-4 is consistent with the goals and purposes of the Act.

Decisions how and to what extent to implement Recommendation 84-4 are within the discretion of the Administrator. The Administrator should pursue negotiated cleanups to the extent that negotation promises to expedite the overall cleanup effort, and not in cases in which negotiation is unlikely to be productive.

Recommendation 84-4 follows.

RECOMMENDATION 84-4

NEGOTIATED CLEANUP OF HAZARDOUS WASTE SITES UNDER CERCLA

(Adopted June 29, 1983)

By enacting the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in 1980, Congress undertook to provide a federal solution for the problem of abandoned and inactive hazardous waste disposal sites. Approximately 2,000 sites require action, at a cost of tens of billions of dollars. CERCLA created a $1.6 billion revolving "Superfund" for direct federal action to clean up these sites and respond to hazardous waste emergencies. The act supplements this public works authority with provisions for negotiating cleanups by "potentially responsible parties"—site owners and operators and users of sites as transportaters and waste generators. It also empowers the federal government to sue such parties for the cost of cleanups paid for out of the Superfund and, if waste disposal may present an "imminent and substantial endangerment," to sue for orders directing responsible parties to clean up sites themselves. The act is administered by the Environmental Protection Agency (EPA).

By early 1984, although EPA had responded to hazardous waste emergencies at many sites, only a handful of sites listed on a statutory national priority list by the agency had been completely cleaned up by the federal government. A few more sites had been cleaned up by private parties. The causes of delay were varied: uncertainty about the extent of the problem and the efficacy of technical remedies; start-up problems inherent in a new program; and a two-year long effort to negotiate cleanups so that no Superfund revenues would have to be spent. By mid-1983, the strategy of conserving the Superfund had fallen apart amidst a major leadership crisis within the EPA. In a policy reversal, Superfund expenditures for cleaning up sites then took priority over other means available under the statute for effecting cleanups.

The current agency approach to CERCLA emphasizes cleanups paid for out of the Superfund coupled with actions to recover the expenditures but also relies to a limited extent on negotiated cleanups and on lawsuits to compel responsible parties to act under CERCLA's imminent endangerment provision. This strategy has resulted in a CERCLA implementation effort that is slow and expensive.

Congress, the EPA, responsible parties, and othe critics have suggested several means of speeding up and economizing on site cleanups. These include enlarging the Superfund, setting program deadlines, expanding the EPA program offices, empowering citizens to sue, and encouraging voluntary cleanup by industry. Although enlarging the Fund, providing more staff, and setting program deadlines would tend to accelerate the CERCLA effort, the Administrative Conference believes that a properly designed site cleanup negotiation process, through which responsible parties or third parties would agree to act directly to clean up sites, would also hasten cleanup while reducing its expense by tapping the technical and financial resources of the private sector. Involvement of the federal government and affected citizens in this process would ensure adequate protection of public health and the environment.

Although current EPA policy permits the negotiation of cleanups, the agency puts too little stress on negotiations and has adopted a series of procedural and substantive requirements that unnecessarily constrict the number of negotiated cleanup agreements that the agency might beneficially conclude. The Conference recognizes, of course, that successful negotiations can only occur when private parties as well as the federal government are willing to respond to the problem of hazardous waste cleanup in good faith. The Conference intends no criticism of aggressive EPA enforcement efforts where responsible parties refuse to cooperate.

In this recommendation the Administrative Conference suggests a series of steps that the EPA might take to encourage and facilitate greater reliance on negotiated private party cleanups, in those situations where negotiations have a realistic chance of success.

RECOMMENDATION

1. The Environmental Protection Agency (EPA) should emphasize the negotiation of voluntary cleanups at hazardous waste dump sites. The negotiation process for any site should include, at an appropriate time and in a appropriate manner, the key interests, such as federal, state and local governments, parties potentially responsible for cleanup (including site users, site owners and operates, and waste transporters), and local citizens. Whenever possible, efforts to negotiate a cleanup agreement should begin well before the commencement of litigation concerning a site. To increase the likelihood that negotiations will succeed, the Administrator and other leading EPA officials, both at headquarters and in the regional offices, should support the negotiation process, follow its implementation, and be available to explain specific negotiated agreements before congressional oversight committees if necessary.

2. Citizens living in the vicinity of or otherwise directly affected by a site have a substantial interest in some issues related to the cleanup process—for example, medical diagnostic testing, relocation of public service facilities, measures to isolate the site, and the overall adequacy of the cleanup effort. Their interest in other aspects of the process, such as the allocation of costs among potentially responsible parties (or between potentially responsible parties and the government) is more problematic. EPA should consider means beyond complete reliance on local political institutions for involving these citizens, including the negotiation of collateral arrangements, participation of citizens' groups in negotiations over the type and scope of the remedy, and the like. Even if not participants, local citizens ordinarily should be permitted to observe those aspects of the negotiations that concern them.

3. Many negotiations can be conducted by EPA without outside assistance. In other cases, where outside assistance is desirable, EPA should encourage efforts by independent mediating organizations or individuals to convene negotiations. This can be accomplished by asking such a convenor at an early stage—no later than the commencement of "remedial investigations and feasibility studies" (a statutory cleanup stage)—to determine whether conditions are favorable for negotiations at a site. Favorable conditions include: issues that are ripe for decision; absence of fundamental conflict about values among those with a stake in the outcome; adequate representation and organization of key interests; opportunity for mutual gain for those with a stake; a balance of power among participants; willingness to bargain in good faith and share information; and willingness of units of government to participate as equal parties. Where negotiation appears feasible, the convenor should attempt to organize a site negotiate group from among the parties with a stake in the site cleanup. If an initial meeting of the parties is successful, the participants should consider retaining the convenor or another person to serve as mediator for the duration of negotiations. EPA should consider using Superfund resources to support an entity, such as a non-profit corporation or another agency, that would undertake this initial convening effort and provide mediation services if the parties desired them. Alternatively

EPA should consider providing these services through personal service contracts with skilled mediators.

4. In order to take advantage of private funds and expertise while they remain available, EPA should encourage and participate in negotiations for cleanup of sites where there is a high likelihood of successful negotiations, even if they have not yet been allocated federal funding for remedial investigations or been added to the National Priority List, unless such negotiations will distort the agency's priorities by diverting substantial agency resources or causing undue delay.

5. EPA should avoid wasting agency resources on unproductive negotiations by establishing, with the concurrence of other negotiating parties, reasonable deadlines for the conclusion of negotiations.

6. Successful negotiation requires that participation by all interests be through persons how, if not principals, have the confidence of, and easy access to, principals with the authority to make binding commitments. For EPA, the negotiators or persons readily accessible to the negotiators should have explicit, broad delegated authority to commit the agency to a negotiated outcome. To the extent that peer review and approval of agreements within the agency are nonetheless required, EPA should provide expedited means for obtaining them. One method of achieving this end would be for EPA headquarters to consolidate review of negotiated cleanups in a single panel of key officials.

7. The final agreement should take the form of an administrative consent order under section 106 of CERCLA or a judicial consent decree. Like other parties to the agreement, EPA should bind itself to undertake appropriate actions and follow agreed-upon schedules.

8. Negotiations undertaken in the context of litigation require procedures and standards different from the procedures and standards applicable to negotiations occurring before a matter reaches litigation. EPA should acknowledge that existing agency guidance memoranda on "case settlement policy" are appropriate for use only in litigation situations; to implement the proposed negotiation process, the agency should prepare new guidance memoranda that bring more appropriate factors to bear on prelitigation negotiations.

9. The Conference recognizes EPA's need to maintain a strong litigation posture in CERCLA cases in order to strengthen its ability to negotiate agreements in the public interest. However, the Conference also urges the agency to consider the possible advantages of greater flexibility in situations where cleanup arrangements are being negotiated rather than litigated. For example, in some cases it might be desirable for EPA to begin to negotiate even if 80 percent of cleanup costs has not been offered or to agree with the parties about the amounts of their individual responsibilities to pay cleanup costs even if the total responsibility adds up to less than 100 percent of cleanup costs (allocating Superfund resources to pay for the rest), as an incentive for cooperating parties to join promptly in an agreement. The intransigence of a few responsible parties should not be permitted to block agreement with others prepared to accept reasonable shares of responsibility; moreover,

such partial agreements may free agency resources to pursue the intransigent parties.

10. Although the Conference believes that its recommendation can be implemented without additional legislation, it acknowledges that the effectiveness of expanded reliance on negotiated cleanups would depend upon the degree of support or opposition from relevant congressional committees. If EPA undertakes efforts to clean up dump sites through a negotiation process like that described in this recommendation, congressional committees should support and encourage these efforts, recognizing that negotiated solutions inevitably involve compromises.

11. To promote achievement of its site cleanup management objectives, EPA should publish statements of its CERCLA policies, such as conditions for undertaking voluntary cleanup negotiations, procedures for public involvement in site cleanup decisions, and site study criteria, in the Federal Register and allow for public comment.

AUTHORIZATION OF APPROPRIATIONS

SUMMARY

The reported bill amends CERCLA to make clear that (1) the proposed extension is for a five-year period and a total of $7.5 billion; and (2) the present structure assumes continuation of the current law's ratio of general and special revenues.

DISCUSSION

After receiving testimony from the Administrator of the Environmental Protection Agency, other governmental officials and outside witnesses, the Committee concluded that the Comprehensive Environmental Compensation and Liability Act should be extended for five years at a level of $7.5 billion. Under current law, funding for the program is derived from taxes on the chemical industry and contributions from the general fund on a roughly seven-eighths and one-eighth basis, respectively. Whether or not this ratio is continued, however, will be determined in part by the Committee on Finance, which has jurisdiction over the taxing aspects of CERCLA. For purposes of clarity, therefore, the reportetd bill amends section 303 to accomplish two ends:

First, establish the size of the Superfund program at $7.5 billion over the next five years.

Second, provide $206 million in authorizations of general fund appropriations, which assumes continuation of the current law's ratio between special and general revenues.

TITLE II

ANIMAL FEED EXEMPTION

SUMMARY

Title II of the reported bill contains a provision extending the tax exemption contained in current law for nitric acid, sulfuric acid, ammonia, and methane used to produce ammonia, when used to produce or manufacture fertilizer, to those same compounds when used as a nutrient in animal feed.

DISCUSSION

Under current law the animal feed industry expects to pay a little more than $1 million into the Fund in fiscal year 1985. In the event phosphoric acid were added to the list of chemical feedstocks contained in Title II of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 the cost to the animal feed industry would increase sevenfold, however, thereby sharply increasing the financial burden for livestock and poultry farmers.

The situation posed by the manufacture of animal feed is very similar to that for fertilizer. While the amount of revenue foregone as a result of extending to animal feed manufacturers the same exemption currently accorded the fertilizer industry is minimal, taxation of these compounds when used to supplement animal feed constitutes a burden on both the animal feed industry and the American agricultural sector which appears to be unnecessary.

HEARINGS

The Committee held two days of hearings, one of which was a field hearing held at Newark, N.J. Testimony was taken from representatives of Federal, State, and local government agencies, environmental and business groups, the medical profession, the academic community, and private individuals.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's consideration of S. 51, there was one rollcall vote taken. The result was announced during the Committee's open meeting. The tabulation of that vote is on file in the Committee office. A second rollcall resulted in a 14-1 vote to report the bill. Voting in favor of reporting the bill were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Durenberger, Hart, Humphrey, Lautenberg, Mitchell, Moynihan, Simpson, and Stafford. Voting in the neagative was Senator Symms.

EVALUATION OF REGULATORY IMPACT

In compliance with the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the legislation.

The bill does not change, to any significant, extent, the number or groups or classes of individuals or activities presently subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Some provisions would have minimal regulatory impacts.

Section 104(c)(4) as modified requires that remedial action be selected according to certain specified criteria. This will require some regulatory and other amplification.

Amendments to section 105 require that the Administrator promulgate amendments to the National Contingency Plan to (1) implement the requirements of this Act and (2) promulgate amendment to the Hazard Ranking System. Neither is expected to create any significant regulatory burdens.

New section 103(i) requires that certain persons who manufacture or store any of a specific list of hazardous substances reports to government agencies on the quantities of these substances they handle and the quantities relased to the environment via various wastestreams. This reporting requirement applies to facilities with ten or more employees that manufacture hazardous substances or store hazardous substances in quantities greater than 6,000 kilograms.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 15, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 51, the Superfund Improvement Act of 1985, as ordered reported by the Senate Committee on Environment and Public Works, March 1, 1985.

S. 51 would authorize, amend, and expand Public Law 96–510, the Comprehensive Environmental Response, Compensation, and Libility Act of 1980 (CERCLA). For fiscal years 1986 through 1990, the bill would authorize general fund appropriations of $206 million annually to the Hazardous Substance Response Trust Fund (Superfund), plus any amounts previously authorized but not appropriated.

S. 51 would also create an experimental victim assistance demonstration program in states selected by the President, funded by up to $30 million annually from the Superfund. In addition, each year the lesser of $50 million or 5 percent of annual appropriations from the Superfund would be made available to the Agency for Toxic

Substances and Disease Registry for health-related activities. The bill would also permit Superfund money to be used to provide alternative water supplies in any case involving groundwater contamination from federal hazardous waste sites.

Under current law, the taxes imposed under CERCLA to fund Superfund will expire September 30, 1985. S. 51 as ordered reported by the Senate Committee on Environment and Public Works does not specify new tax provisions but rather states that combined taxes and general fund appropriations over five years shall total $7.5 billion. Assuming general fund appropriations of $206 million annually, tax rates would have to be set to produce $6.47 billion over five years in order to reach specified total. CERCLA authorizes the appropriation of any amounts in the fund, and this estimate assumes that all monies in the fund are appropriated each year. The following table summarizes the budget impact of this bill, assuming enactment of the necessary excise taxes.

BUDGET EFFECTS OF S. 51, ASSUMING TAX RATES ARE SET TO PRODUCE $6.47 BILLION BY 1990

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Spending effect:					
Estimated authorization level	1,550	1,500	1,500	1,500	1,500
Estimated Outlays	540	1,070	1,360	1,500	1,500
Revenue effect:					
Estimated revenues:					
Receipts from excise taxes	1,290	1,290	1,290	1,290	1,290
Less: Income tax offset	320	320	320	320	320
Net revenues	970	970	970	970	970
Total budget impact:					
Estimated revenues	970	970	970	970	970
Estimated outlays	540	1,070	1,360	1,500	1,500
Estimated increase (+) or decrease(−) in deficit	−430	100	390	530	530

The above estimates are relative to current law and assume that any new tax provisions would become effective October 1, 1986.

When compared to the CBO scorekeeping baseline, the net revenue increase under S. 51 would range from $760 million in 1986 to $730 million in 1990. The increase relative to the baseline is smaller than that shown in the table above, because the baseline assumes extension of Superfund taxes at current rates.

Section 136 of the bill would set requirements for federal agencies in handling hazardous waste sites at federal facilities. Each agency would be required to include in its annual budget request sufficient funds to complete remedial actions at these sites. This is not likely to result in a significent budget impact, because many such actions are already underway. For example, $314 million was appropriated to the Department of Defense in 1985 for this purpose. (The cost to clean up sites on Department of Defense lands has been estimated at about $1.6 billion through 1993. Most of the clean-up by civilian agencies would fall under the jurisdictions of the Department of the Interior and the Department of Energy).

A number of provisions of S. 51 would affect the budgets of state governments. The bill would amend Section 104 of the 1980 Act by expanding the state credit provisions and by allowing states to apply so-called window period (i.e., January 1, 1978 through December 11, 1980) retroactive credits to any eligible site within the state. Based upon information from the EPA, we estimate that the application of the retroactive credit provision would result in about $40 million in credits to the states.

In addition, S. 51 clarifies the definition of remedial action by including in it up to the first five years of groundwater treatment, which current law treats as operation and maintenance. The effect of this provision is to reduce potential costs to states, which currently must pay for only a portion of remedial actions but 100 percent of long-term operating and maintenance costs. The potential benefit could be substantial but is difficult to quantify. A rough estimate of savings to the states would be about $200 million over five years, based on information from the EPA. This provision is not expected to result in any new retroactive credits or refunds to states, since it appears that none are currently paying for remedial groundwater treatment at any Superfund site.

Finally, this bill would effectively repeal the provision of current law that preempts state taxing authority by eliminating subsection 114(c) of the 1980 act. This provision would enable states to impose any type of taxes necessary for purposes of recouping certain categories of state clean-up costs and related expenses.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANNSHEK
(For Rudolph G. Penner).

ADDITIONAL VIEWS OF SENATOR LAUTENBERG

Mr. Chairman, I would like to commend you and our ranking minority member, Senator Bentsen, for sticking to a rigorous schedule for consideration of the Superfund reauthorization. Approval of S. 51 by a vote of 14 to 1 sends a strong message to the Finance Committee and the Senate as a whole that we must make Superfund a top priority for early action this session.

The importance of an expanded and accelerated Superfund program cannot be understated. Citizens who live in continual fear, fear of contaminated groundwater, air, and soil from Superfund sites deserve to have this program implemented as quickly and effectively as possible. The sheer magnitude of the task, and the need for the Environmental Protection Agency and the states to make managerial and financial commitments without loss of continuity, requires that the Superfund program be reauthorized well before it expires in October, 1985.

Superfund sites are being added to the National Priority List at an astounding rate. There are 538 sites currently on the list and an additional 248 were proposed in October. The EPA estimates that the list will grow to 1800 to 2500 sites in the near term, and cost $11.7 billion to $22.7 billion from the federal fund alone to clean up. In a recently released report, the Office of Technology Assessment estimated that there are 10,000 or more sites that require clean up at a staggering cost of $100 billion.

It is imperative, therefore, that EPA have adequate resources to do the job ahead. While the Committee approved a funding level of $7.5 billion, I believe that a higher level of funding, at least $10 billion, is needed to ensure that EPA not only continues its current program but accelerates it in every way possible, including greater delegation to the States. The National Governors' Association recently reaffirmed their position that $9 billion is needed over the next five years to accomplish the federal and state program goals. To compel the Agency to conduct the cleanup program at the fastest possible pace, targets for listing and initiating studies and cleanup should also be adopted in the form of schedules.

On February 18, Committee conducted a Superfund field hearing in Newark, New Jersey which focused on the ability of federal, state and local governments and communities to prepare and respond to releases of hazardous substances into the environment. In response to a number of issues raised at the hearing, the Committee adopted provisions improving notification and penalties and establishing a national hazardous substance inventory. In addition, the hearing built a strong record for emergency planning, including release prevention, containment, and countermeasure plans for those handling substances that pose the greatest risk. However, inadequate time precluded the Committee from considering amendments in the area of prevention and emergency response. I look forward to working with other members of the Committee in developing these amendments before the bill is put before the full Senate for consideration.

The Superfund program, designed to prevent and respond to acute and chronic releases of hazardous substances to the environment, is of vital importance to the American public. The terrible tragedy in Bhopal, India was a grim reminder. Congress must renew its commitment to the program at the earliest possible time.

FRANK R. LAUTENBERG.

ADDITIONAL VIEWS OF SENATOR SIMPSON

The Committee has now reported a bill—substantially similar to one we reported last year—reauthorizing the Superfund statute. Although we have made certain improvements in this legislation, I wish to point out several problems that I feel remain. My concerns can be divided into two categories: Those that were taken into account by the Committee—and those that I feel may not adequately have been taken into account.

My overriding concern, which I share with this Administration, is that the Superfund may be asked to do so many things that it will not be doing its greatest task as expeditiously as it might—that "greatest task", of course, is the clean-up of hazardous waste sites. While the bill somewhat limits the scope of the fund, I would prefer an explicit focus on the primary goal, with more discretion left to the Agency as to how it will accomplish that goal.

Of the provisions that were added during the last work up, the new "Citizen Suit" language concerns me greatly. It is representative of the way in which laudatory goals can potentially disrupt a program. There was never any suggestion that there was a need for this new provision. Instead, it was merely assumed that there was such a "need", and now that "need" has been met.

The approach of limiting the provisions to "non-discretionary" actions of the President, particularly when decisions as to site remediation are excluded, appears reasonable. But soon there will be cases that challenge interpretations of "non-discretionary" in the attempt to make the tool more useful. Further, the presence of the provision may encourage some to seek an increasing number of non-discretionary actions to be placed into CERCLA.

Another important amendment to this bill was the addition of Senator Mitchell's "Victim Assistance" provisions, designed to provide medical insurance for individuals alleging injury or disease as a consequence of exposure to a hazardous substance. Although Senator Mitchell and I have sometimes found ourselves on opposite sides of the fence on these issues, we do share a fundamental concern for the health of the people and a desire to determine, once and for all, whether there is a major health problem arising from these sites. We enjoyed working together on some of the amendment language, and he eventually decided to maintain some of the language on which we had agreed. Nonetheless, in the end, I could not cosponsor or support the amendment. I appreciated his fine cooperation.

Senator Mitchell's amendment is, in my judgment, much improved over earlier versions. But his improvements, particularly in limiting what I considered to be ill-advised levels of benefits which could disrupt existing health care systems, also served to refocus my thinking on the ultimate question which is: Should we, as a society, allocate resources to compensate individuals, above and beyond what is generally available, solely because they are injured as a result of certain risks that are singled out on the basis of political muscle or immediate public concern?

The other problem one faces in attempting to craft policy in the area of "victim assistance" is the causation question. We simply do not have the present ability to link the alleged injury or disease of an individual with the exposure which allegedly "caused" it. Senator Mitchell's amendment is an admirable effort toward making that link, but there remains an area of murky uncertainty that will lead to problems ahead, if the program is eventually expanded. Although I have expressed the view that I could support a tightly-crafted program analogous to the Agent Orange approach worked out by Senator Cranston and I on the Veterans' Committee last year, I have come to have doubts that such an approach is really transferable to the broader context of hazardous substance exposure.

While the legal and scientific questions appear disturbingly unfamiliar, the likely public policy outcome looks disturbingly familiar—and, as we are now learning in area after area in our government, the road back from trying to build up broken-down initiatives is not an easy one.

Finally, I would like to express my concern over some of the issues not raised during the work on this legislation—concerns that, while pushed to one side for now, may well come to haunt us as we review the contined effectiveness of the CERCLA program. One such issue is that of the liability faced by potentially responsible parties at sites. Now that it has been held by several courts that a "strict, joint and several" standard may be applied, the question of whether a right of contribution exists has become critical. This legislation answers that question in the affirmative, and also provides so-called "Contribution protection" to encourage parties to settle. It is the hope of the EPA and Department of Justice that the liability standard, combined with the new pre-enforcement review language in the statute, will encourage voluntary clean-up and expedited action generally.

At the same time we are hearing that "Transaction costs"—economists' language for lawyers' fees and administrative costs—are, in at least a few cases, approaching or surpassing the projected clean-up costs at sites. Although such evidence now is merely anecdotal, it is nonethless disturbing. I do hope to learn more about this in the months ahead; and will urge EPA and the Department of Justice to inquire into the matter closely, and to share information on the entire matter of transaction costs with the Congress.

I am pleased that the EPA is presently looking into these insurance issues, and that our Committee will soon hold a hearing to examine them. I would hope that we will listen to these new questions carefully, and be willing to carefully consider whatever implications may be suggested for the manner in which we have chosen, as a society, to implement the urgent task of caring for and restoring our nation's remarkable treasures of nature.

Alan K. Simpson.

MINORITY VIEWS OF SENATOR SYMMS

In the end, I must vote against the bill as it is to be reported from Committee—not because I am against the program of cleaning up hazardous waste, but because I feel that we could approach it more effectively. At a time of billion-dollar deficits, there is more reason than ever to look at where our tax dollars are going. We have every reason to think that this bill spends too much money, and will not achieve enhanced public health as part of the bargain.

The Administration, led by the able Administrator of the EPA, Lee Thomas, argued strongly that it simply could not spend more than the $5 billion over 5 years that it requested. Lee Thomas recently served as the head of EPA's solid waste program, and, in light of his fine performance, I would have thought that his views would have received special weight. Nonetheless, the Committee voted to spend $7.5 billion over the 5 years. Since this additional money cannot be shown to contribute to better public health, I see the Committee's action as merely enlarging the Federal bureaucracy. I would have wholeheartedly supported a budget at the level requested by EPA. I must now vote against a level of funding that is so ineffectively high.

Another trend that is continued, to the detriment of this legislation, is the unfortunate tendency to add new resource requirements to the fund. The problem is that the scope of the Fund has not been narrowed and clarified to the degree that the Administration sought and that I could support. The Fund continues to go beyond cleanup with the inclusion of provisions such as victim assistance. History has shown us that the constituency of such programs has not tended to shrink upon enactment, and I fear that this will be no exception. My ultimate concern is that in using so much of our resources to determine whether there is a health problem arising from these sites, we may find that clean-up is delayed—and whatever health problem there is will be exacerbated. On this matter of the expansion of the roles of the Fund, I find myself in concurrence with the additional views of Senator Simpson.

STEVE SYMMS.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

PUBLIC LAW 96-510

AN ACT To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title, the term—

* * * * * * *

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, [or] any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe;

* * * * * * *

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threat-

ened individuals not otherwise provided for, *costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare,* action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974[;]. *In the case of a business located in an area of evacuation or relocation, the term may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and thirty days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, it may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974: Provided, That the costs of such assistance shall be paid from the Trust Fund;*

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances [or] *and associated* contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment, *as well as the offsite transport and offsite storage, treatment destruction of hazardous substances and associated contaminated materials.* The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare[.]*;* [The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or

potential risk which may be created by further exposure to the continued presence of such substances or materials;]

* * * * * * *

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act[.]*;*

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; [and]

(32) "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act[.]*;*

(33) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, incluidng any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and serious provided by the United States to Indians because of their status as Indians; and

(34) "alternative water supplies" includes, but is not limited to, drinking water and household water supplies.

NOTICES, PENALTIES, *AND INVENTORY*

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify *(1)* the National Response Center established under the Clean Water Act of such release, *and (2), in the case of any such release of a hazardous substance with a reportable quantity of one pound or less or any release of any other hazardous substance in a quantity determined by the President by regulation to potentially require emergency response, all State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release.* The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appro-

priate agency of the United States Government *(or, in the case of a release to which subsection (a)(2) applies, any appropriate State or local emergency response official)* as soon as he has knowledge of such release shall, upon conviction, be fined not more than **[**$10,000 or imprisoned for not more than one year, or both.**]** *$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).* Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

* * * * * * *

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined not more than **[**$20,000,**]** *$25,000,* or imprisoned for not more than one year, or both.

* * * * * * *

(g)(1) In addition to any other relief provided, whenever on the basis of any information available to the President the President finds that any person is in violation of subsection (a) or (b) of this section the President may assess a civil penalty of not more than $10,000 for each failure to notify the appropriate agency. The penalty under this subsection shall increase to not more than $25,000 for a second violation by the same person, not more than $50,000 for a third violation by the same person, and not more than $75,000 for a fourth or subsequent violation by the same person.

(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such

violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(6) Action taken by the President pursuant to this subsection shall not affect or limit the President's authority to enforce any provision of this Act: Provided, however, That a failure to notify the appropriate agency which is penalized administratively under this subsection shall not be the subject of a criminal penalty under subsection (b) of this section.

(h)(1) Each facility owner or operator that (A)(i) manufactures a hazardous substance (as defined in section 101(14) of this Act), or (ii) stores six thousand kilograms or more of such hazardous substance, and (B) has ten or more full-time employees, shall complete and distribute a Hazardous Substances Inventory form as published under paragraph (2) of this subsection within 180 days after the enactment of the Superfund Improvement Act of 1985 and every twenty-four months thereafter, or more often as changed circumstances require. For the purposes of this subsection, a mixture containing more than 1 per centum of any hazardous substance covered by this section shall be considered a hazardous substance.

(2) The President shall publish the Hazardous Substances Inventory form in the Federal Register within sixty days after the date of enactment of the Superfund Improvement Act of 1985. Publication of such form shall be exempt from the requirements of the Paper-

work Reduction Act and Office of Management and Budget Circular A–40 (title 5 of the Code of Federal Regulations, part 1320).

(3) The Hazardous Substances Inventory form shall provide for submission of the following information for each hazardous substance:

(A) the description of the use of the hazardous substance at the facility, including, but not limited to, the quantity of the hazardous substance produced or consumed at such facility;

(B) the maximum inventory of the hazardous substance stored at the facility, the method of storage, and the frequency and methods of transfer;

(C) for each of the following, the annual and monthly total emissions or discharge of each hazardous substance for the calendar year immediately preceding the submission of the Hazardous Substances Inventory form:

(i) the stack or point-source emissions;

(ii) the estimated fugitive or non point-source emissions of the hazardous substances;

(iii) the discharge into the surface water or groundwater, the treatment methods, and the raw wastewater volumes and loadings; and

(iv) the discharge into publicly-owned treatment works;

(D) the quantity and methods of disposal of any wastes containing the hazardous substance, the method of onsite storage of such wastes, the location or locations of the final disposal site of such wastes, and the identity of the transporter of such wastes;

(E) the month and year that the information on the Hazardous Substances Inventory was compiled and the name, address, and emergency telephone number of the person responsible for preparing the information.

For the purposes of this paragraph, facility owners and operators may utilize readily available data collected pursuant to other State and Federal environmental laws.

(4) Each person who submits a form pursuant to the requirements of this subsection shall attach thereto a copy of the Material Safety Data Sheet, required pursuant to the Occupational Safety and Health Act, pertaining to the hazardous substance that is reported in the form.

(5) The Hazardous Substances Inventory shall be distributed by the facility owner or operator to, at a minimum, the President; State and local emergency and medical response personnel; the State police, health and environmental departments; area police and fire departments; area emergency medical services; area hospitals; and area libraries.

(6) The President, for the purposes of this subsection, shall establish a toll-free telephone number, operating twenty-four hours per day, that is computer accessible, to respond to telephone inquiries concerning the Hazardous Substances Inventory and the information contained therein. Within sixty days of establishment of such a telephone line, the President shall inform appropriate State and local officials.

(7)(A) The President may verify the data contained in the Hazardous Substances Inventory form using the authority of section 104(e) of this Act.

(B) Information submitted under this subsection shall be treated as information submitted under section 104(e) and shall be subject to the provisions of section 104(e)(2).

(8) Any person who knowingly omits material information or makes any false material statement or representation in the Hazardous Substances Inventory, shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than one year, or both.

(9) Nothing in this subsection shall be construed to limit the ability of any State to require submission of information related to hazardous substances, or to require additional distribution of the Hazardous Substances Inventory form from facilities operating within its borders.

(i)(1) Every two years after the date of enactment of the Superfund Improvement Act of 1985, the National Toxicology Program, in consultation with appropriate Federal agencies, shall review new and existing chemicals and compile a list of substances to supplement those referred to in subsection (h), taking into account, at a minimum, the reactivity, toxicity, volatility, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, and production levels of the chemical.

(2) Within one hundred and eighty days after publication of the list compiled by the National Toxicology Program, the President shall promulgate such list of substances as those requiring preparation and distribution of the Hazardous Substances Inventory under this Act, unless the President demonstrates that a particular hazardous substance does not present a risk equal to or greater than those substances referred to in subsection (h)(1). In the event that the President decides not to list a hazardous substance, the President shall, with opportunity for public notice and comment, state the basis on which the hazardous substance was not considered to present a risk sufficient to warrant preparation and distribution of the Hazardous Substances Inventory.

RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment**[**,**]**. **[**unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.**]** *The President shall give primary attention to those releases which may present a public health threat. The President may authorize the owner or operator of the vessel or facility from which the release or threat of release emanates, or any other responsible party, to perform the removal or remedial action if the President determines that such action will be done properly by the owner, operator, or responsible party.*

(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(3) The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within a facility; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section the President may respond to any release or threat of release if in the President's discretion it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

* * * * * * *

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, *or (C) continued response action is otherwise appropriate and consistent with permanent remedy,* obligations from the Fund, other than those *for permanent relocation or* authorized by subsection (b) of this section, shall not continue after $1,000,000 has been obligated for response actions or **[**six months**]** *one year* has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or [(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.] *(ii) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of subparagraph (C)(ii) of this paragraph, the term "facility" does not include navigable waters or the beds underlying those waters. In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the President shall grant the State a credit for amounts expended or obligated by such State or by a political subdivision thereof after January 1, 1978, and before December 11, 1980, for any response action costs which are covered by section 111(a) (1) or (2) and which are incurred at a facility or release listed pursuant to section 105(8). Such credit shall have the effect of reducing the amount which the State would otherwise be required to pay in connection with assistance under this section. The President shall grant the State a credit against the share of costs for which it is responsible under this paragraph for any reasonable, documented,*

direct out-of-pocket non-Federal funds expended or obligated by the State under a contract or cooperative agreement under the last sentence of subsection (d)(1). In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility. In the case of any State which has paid, at any time after the date of the enactment of the Superfund Improvement Act of 1985, in excess of 10 per centum of the costs of remedial action at a facility owned but not operated by such State or by a political subdivision thereof, the President shall use money in the Fund to provide reimbursement to such State for the amount of such excess.

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.]

(4)(A) The President shall select appropriate remedial actions determined to be necessary to carry out this section which, to the extent practicable, are in accordance with the national contingency plan and which provide for cost-effective response. In evaluating the cost-effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(B) Remedial actions in which treatment which significantly reduces the volume, toxicity or mobility of the hazardous substances is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action, where practicable treatment technologies are available.

(C) Remedial actions selected under this paragraph or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants from the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(D) No permit shall be required under subtitle C of the Solid Waste Disposal Act, section 402 or 404 of the Clean Water Act, in section 10 of the Rivers and Harbors Act of 1899, for the portion of any removal or remedial action conducted pursuant to this Act en-

tirely onsite: Provided, That any onsite treatment, storage, or disposal of hazardous substances, pollutants, or contaminants shall comply with the requirements of subparagraph (C).

(E) Subject to the requirements of this paragraph, the President shall select the appropriate remedial action which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

(5) For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period up to five years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(6) During any period after the availability of funds received by the Trust Fund under sections 4611 and 4661 of the Internal Revenue Code of 1954 or section 221(b)(2) or section 303(b) of this Act, the Federal share of the payment of costs for operation and maintenance pursuant to paragraph (3)(C)(i) or paragraph (5) of this subsection shall be from funds received by the Trust Fund under section 221(b)(1)(B).

(7) Effective three years after the date of enactment of the Superfund Improvement Act of 1985, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act with adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the twenty-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed.

[(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.]

(d)(1) Where the President determines that a State or political subdivision or Indian tribe has the capability to carry out any or all of

the actions authorized in this section, the President may, in the discretion of the President and subject to such terms as the President may prescribe, enter into a contract or cooperative agreement and combine any existing cooperative agreements with such State or political subdivision or Indian tribe (which may cover a specific facility or facilities) to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for the reasonable response costs and related activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities authorized by this Act. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section. For the purposes of the last sentence of subsection (c)(3) of this section, the President may enter into a contract or cooperative agreement with a State under this paragraph under which such State will take response actions in connection with releases listed pursuant to section 105(8)(B), using non-Federal funds for such response actions, in advance of and without any obligation by the President of amounts from the Fund for such response actions.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

[(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

[(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

[(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e)(1) For the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title, any officer, employee, or representative of the President, duly designated by the President, or any duly designated officer, employee, or representative of a State, is authorized where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance—

(A) to require any person who has or may have information relevant to (i) the identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility, or (ii) the nature or extent of a release or threatened release of a hazardous substance at or from a facility, to furnish, upon reasonable notice, information or documents relating to such matters. In addition, upon reasonable notice, such person either shall grant to appropriate representatives access at all reasonable times to inspect all documents or records relating to such matters or shall copy and furnish to the representatives all such documents or records, at the option of such person;

(B) to enter at reasonable times any establishment or other place or property (i) where hazardous substances are, may be, or have been generated, stored, treated, disposed of, or transported from, (ii) from which or to which hazardous substances have been or may have been released, (iii) where such release is or may be threatened, or (iv) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title; and

(C) to inspect and obtain samples from such establishment or other place or property or location of any suspected hazardous substance and to inspect and obtain samples of any containers or labeling for suspected hazardous substances. Each such inspection shall be completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. If any analysis is made of such samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(2)(A) If consent is not granted regarding a request made by a duly designated officer, employee, or representative under paragraph (1), the President, upon such notice and an opportunity for consultation as is reasonably appropriate under the circumstances, may issue an order to such person directing compliance with the request, and the President may ask the Attorney General to commence a civil action to compel compliance.

(B) In any civil action brought to obtain compliance with the order, the court shall, where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance: (i) in the case of interference with entry or inspection, enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or not in accordance with law; and (ii) in the case of information or document requests, enjoin interference with such information or document requests or direct compliance with orders to provide such information or documents, unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or not in accordance with law. The court may assess a civil penalty not to exceed $10,000 against any person who unreasonably fails to comply with the provisions of paragraph (1) or an order issued pursuant to paragraph (2).

(3) Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(4) Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the President who is properly cleared.

[(2)(A)**]** *(5)(A)* Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

* * * * * * *

(i)*(1)* There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to **[**the Surgeon General of the United States.**]** *The Secretary of Health and Human Services.* The Administrator of said Agency *(hereinafter in this sub-*

section referred to as "the Administrator") shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(1)**]** *(A)* in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

[(2)**]** *(B)* establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

[(3)**]** *(C)* in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

[(4)**]** *(D)* in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, **[**chromosomal testing,**]** *appropriate testing* epidemiological studies, or any other assistance appropriate under the circumstances; and

[(5)**]** *(E)* either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2) The Agency for Toxic Substances and Disease Registry shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Environmental Protection Agency, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

(3)(A) The Administrator shall perform a health assessment for each release, threatened release or facility on the National Priority List established under section 105. Such health assessment shall be completed not later than two years after the date of enactment of the Superfund Improvement Act of 1985 for each release, threatened release or facility proposed for inclusion on such list prior to such date of enactment or not later than one year after the date of proposal for inclusion on such list for each release, threatened release or facility proposed for inclusion on such list after such date of enactment. The Administrator shall also perform a health assessment for each facility for which one is required under section 3019 of the Solid Waste Disposal Act and, upon request of the Administrator of the Environmental Protection Agency or a State, for each facility subject to this Act or subtitle C of the Solid Waste Disposal Act,

where there is sufficient data as to what hazardous substances are present in such facility.

(B) The Administrator may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator providing such information and requesting a health assessment. If such a petition is submitted and the Administrator does not initiate a health assessment, the Administrator shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining sites at which to conduct health assessments under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subparagraph (E).

(D) Any State or political subdivision carrying out an assessment shall report the results of the assessment to the Administrator of such Agency, and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of such Agency shall include the same recommendation in a report on the results of any assessment carried out directly by the Agency, and shall issue periodic reports which include the results of all the assessments carried out under this paragraph.

(E) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(F) At the completion of each health assessment the Administrator shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment,

together with any recommendations for further action under this subsection or otherwise under this Act.

(G) In any case in which a health assessment performed under this paragraph (including one required by section 3019 of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such releases.

(4) Whenever, in the judgment of the Administrator, it is appropriate on the basis of the results of a health assessment, the Administrator shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population. Whenever in the judgment of the Administrator it is appropriate on the basis of the results of such pilot study, the Administrator shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances in a release or suspected release.

(5) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(6) The Administrator shall conduct a study, and report to the Congress within two years after the date of enactment of the Superfund Improvement Act of 1985, on the usefulness, costs, and potential implications of medical surveillance programs as a part of the health studies authorized by this section. Such study shall include, at a minimum, programs which identify diseases for which an exposed population is at excess risk, provide periodic medical testing to screen for such diseases in subgroups of the exposed population at highest risk, and provide for a mechanism to refer for treatment individuals who are diagnosed as having such diseases.

(7) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

(1) provision of alternative water supplies, and

(2) permanent or temporarily relocation of individuals.

(8) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President or the Administrator of the Environmental Protection Agency to exercise any authority vested in the President or such Administrator under any other provision of

law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

(9)(A) The Administrator shall, within six months after the date of enactment of the Superfund Improvement Act of 1985, prepare a list of at least one hundred hazardous substances which the Administrator, in his sole discretion, determines are those posing the most significant potential threat to human health due to their common presence at the location of responses under section 104 or at facilities on the National Priority List or in releases to which a response under section 104 is under consideration. Within twenty-four months after enactment, the Administrator shall prepare a list of an additional one hundred or more such hazardous substances. The Administrator shall not less often than once every year thereafter add to such list other substances which are frequently so found or otherwise pose a potentially significant threat to human health by reason of their physical, chemical, or biological nature.

(B) For each such hazardous substance listed pursuant to subparagraph (A), the Administrator (in consultation with other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator, in cooperation with the Director of the National Toxicology Programs, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Such program shall include, but not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(C) In assessing the need to perform laboratory and other studies, as required by subparagraph (B), the Administrator shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by subparagraph (F) of this paragraph; and

(iii) such other scientific and technical factors as the Administrator may determine are necessary for the effective implementation of this subsection.

(D) In the development and implementation of any research program under this paragraph, the Administrator of the Agency for Toxic Substances and Disease Registry and the Administrator of the

Environmental Protection Agency shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, in the discretion of the Administrator and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(E) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Where this is not practical, the costs of such research programs should be borne by parties responsible for the release of the hazardous substance in question. To carry out such intention, the costs of conducting such a research program under this paragraph shall be deemed a cost of response for the purposes of recovery under section 107 of such costs from a party responsible for a release of such hazardous substance.

(F) Based on all available information, including data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator shall prepare toxicological profiles sufficient to establish the likely effect on human health of each of the substances listed pursuant to subparagraph (A). Such profiles shall be revised and republished as necessary, but no less often than once every five years. Such profiles shall be provided to the States and made available to other interested parties.

(10) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry.

(11) In the implementation of this subsection and other health-related authorities of this Act, the Administrator is authorized to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to toxic substances, through such means as the Administrator deems appropriate. Not later than two years after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall report to the Congress on the implementation of this paragraph.

(12) For the purpose of implementing this subsection and other health-related authorities of this Act, the President shall provide

adequate personnel to the Agency for Toxic Substances and Disease Registry, which shall be no fewer than one hundred full time equivalent employees.

(13) The activities described in this subsection and section 111(c)(4) shall be carried out by the Agency for Toxic Substances and Disease Registry established by paragraph (1), either directly, or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of such Agency determines are capable of carrying out such activities. Such activities shall include the provision of consultations on health information, and the conduct of health assessments, including those required under section 3019 of the Solid Waste Disposal Act, health studies and registries.

(j) Before selection of appropriate remedial action to be undertaken by the United States or a State or before entering into a covenant not to sue or to forebear from suit or otherwise settle or dispose of a claim arising under this Act, notice of such proposed action and an opportunity for a public meeting in the affected area, as well as a reasonable opportunity to comment, shall be afforded to the public prior to final adoption or entry. Notice shall be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposal and alternative proposals considered.

(k) In determining priorities among releases and threatened releases under the National Contingency Plan and in carrying out remedial action under this section, the Administrator shall establish a high priority for the acquisition of all properties (including nonowner occupied residential, commerical, public, religious, and vacant properties) in the area in which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner occupied residences have been acquired pursuant to such determination.

(l)(1) If the President determines that one or more responsible parties will properly carry out action under subsection (b) of this section, the President may enter into a consent administrative order with such party or parties for that purpose.

(2) The United States district court for the district in which the release has occurred or threatens to occur shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $10,000 for each day in which such violation occurs or such failure to comply continues.

NATIONAL CONTINGENCY PLAN

SEC. 105. *(a)* Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. *A State shall be allowed to designate its highest priority facility only once.* To the extent practicable, [at least four hundred of] the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities [at least] one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

(b) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Improvement Act of 1985 relating to the selection of remedial action.

(c) Not later than twelve months after the date of enactment of the Superfund Improvement Act of 1985 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985 and such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priority List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue to full force and effect.

ABATEMENT ACTION

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b) *(1)* Any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than **[**$5,000**]** *$10,000* for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within sixty days of completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within thirty days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order: Provided, however, That a petitioner who is liable for response costs under section 107(a) may recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in issuing the order was arbitrary and capricious or otherwise not in accordance with law. In any such case, the petitioner may be awarded all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

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LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel **[**(otherwise subject to the jurisdiction of the United States)**]** or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State *or an Indian tribe* not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

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(d)*(1)* No person shall be liable under this title for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(2) No State or local government shall be liable under this title for costs or damages as a result of non-negligent actions taken in response to an emergency created by the release of a hazardous substance, pollutant, or contaminant generated by or from a facility owned by another person.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) The Administrator may, in contracting or arranging for response action to be undertaken under this Act, agree to hold harmless and indemnify a contracting party against claims, including the expenses of litigation or settlement, by third persons for death, bodily injury or loss of or damage to property arising out of performance of a cleanup agreement to the extent that such claim does not arise out of the negligence of the contracting party.

[(2)] *(3)* Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f)*(1)* In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State *and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: Provided, however,* That no liability to the United States or State *or Indian tribe* shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, *so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.* The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government *or Indian tribe,* but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2)(A) The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

(B) The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this

Act and section 311 of the Clean Water Act for those resources under their trusteeship.

(C) Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

(D) The President shall promulgate the regulations required under section 301 of this Act not later than six months after the enactment of the Superfund Improvement Act of 1985.

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(i) No person (including the United States or any State *or Indian tribe*) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State *or Indian tribe*) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

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(l)(1) In any civil or administrative action under this section or section 106, no claim for contribution or indemnification may be brought until after entry of judgment or date of settlement in good faith. Nothing in this subsection shall diminish the right of any person to bring an action for contribution or indemnification in the absence of a civil or administrative action under this section or section 106.

(2) After judgment in any civil action under section 106 or under subsection (a) of this section, any defendant held liable in the action may bring a separate action for contribution against any other person liable or potentially liable under subsection (a). Such an action shall be brought in accordance with section 113. Except as provided in paragraph (4) of the subsection, this subsection shall not impair any right of indemnity under existing law.

(3) When a person has resolved its liability to the United States or a State in a judicially approved good faith settlement, such person shall not be liable for claims for contribution under paragraph (2) of this subsection regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others to the extent of any amount stipulated by the settlement.

(4) Where the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in a good faith settlement, the United States or the State may bring an action for the remainder of the relief sought against any person who has not so resolved its liability. A person that has resolved its liability to the United States or a State in a good faith settlement may, where appropriate, maintain an action for contribution or indemnification against any person that was not a party to the settlement. In any action under this paragraph, the rights of a State or any person that has resolved its liability to the United States or a State shall be subordinate to the rights of the United States. Any contribution action brought under this paragraph shall be brought in accordance with section 113.

(m)(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property belonging to such person that are subject to or affected by a removal or remedial action.

(2) The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act and shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113(e).

(3) The lien imposed by this subsection shall not be valid as against any purchaser, holder of a security interest, or judgment lien creditor until notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided in section 6323(h) of title 26, United States Code. This paragraph does not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

(4) The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. *Finan-*

cial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96–296.

[(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

[(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.**]**

(c) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all

rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(d) The total liability under this Act of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Act: Provided, That nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim: Provided further, That nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under section 107 or 111 of this Act or other applicable law.

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USES OF FUND

SEC. 111. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; and

(4) payment of costs specified under subsection (c) of this section.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, *or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.*

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State *or Indian tribe* efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) *in accordance with subsection (n) of this section and section 104(i),* the costs of **[**epidemiologic studies,**]** *epidemiologic and laboratory studies and health assessments,* development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; **[**and**]**

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees**[**.**]** *and;*

(7) the costs of grants under subsection (m), not to exceed a total of $30,000,000 per fiscal year, to be provided out of funds received by the Trust Fund under section 303(b).

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(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. *No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.*

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities: *Provided, That money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.*

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State *or Indian tribe* operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

[(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

[(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.]

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, *and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,* after adequate public notice and opportunity for hearing and consideration of all public comment.

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(m)(1) In the case of any geographic area (as identified by the Agency for Toxic Substances and Disease Registry) for which a health assessment or other health study performed under section 104(i) indicates that—

(A) there is a disease or injury for which the population of such area is placed at significantly increased risk as a result of a release of a hazardous substance;

(B) such disease or injury has been demonstrated by peer reviewed studies to be associated (using sound scientific and medical criteria) with exposure to a hazardous substance; and

(C) the geographical area contains individuals within the population who have been exposed to a hazardous substance in a release,

the State in which such area is located may apply to the Administrator of the Environmental Protection Agency to operate an experimental demonstration assistance program under this subsection.

(2) From areas nominated under paragraph (1) the President shall select, during each of fiscal years 1986 and 1987, no less than five or more than ten areas for demonstration assistance programs under this subsection. Such selections shall be made in the discretion of the President, taking into account—

(A) the experience of State and local governments in administering programs which deal with the regulation of toxic chemicals and hazardous substances; and

(B) the representative nature of the hazardous substance releases and exposures in terms of the identities and toxic characteristics of the substances found, the manner and degree of exposure, the scientific and medical method used to determine such exposure, and the seriousness and duration of the diseases or illnesses caused.

(3) For each area selected under paragraph (2) the State shall establish and operate for a period of not less than three years or more than five years a program of medical assistance to individuals who, according to health assessments or other studies done under section 104(i) have been placed at significantly increased risk of disease or injury due to exposure to a hazardous substance from a release. The President shall make a grant for each such area in an amount of not less than $1,000,000 nor more than $10,000,000 per fiscal year (and a total for all such grants of not more than $30,000,000 per fiscal year), but in no event shall grants be made in fewer than five States.

(4) Programs funded pursuant to this subsection shall not provide assistance in the case of any area or class of individuals in which a solvent responsible party who may be liable under section 107 is paying compensation for claims or otherwise providing medical assistance, comparable (though not necessarily identical in scope or duration) to assistance under this subsection. If a party has accepted liability for such claims or assistance, no assistance shall be available under this subsection even though the party may not have commenced assistance at the time of an application by a State.

(5) A program established and operated under this subsection shall provide the following assistance:

(A) appropriate medical screening, examination and testing (in accordance with sound medical procedures) as necessary to determine the presence in individuals of the disease or injury for which the population of the geographic area is at significantly increased risk;

(B) for individuals with no present symptoms of such disease or injury, a group medical benefits policy providing the reasonable costs of periodic medical screening, testing or examination (in accordance with sound medical procedures), as necessary to determine the presence of such symptoms; and

(C) for individuals with present symptoms of such disease or injury (or who develop such symptoms)—

(i) reimbursement of the out-of-pocket costs of related medical expenses in connection with such disease or injury previously incurred and not recovered from any other public or private source, and

(ii) a group medical benefits insurance policy providing the reasonable costs of sound medical and surgical treat-

ment and hospitalization resulting from such disease or injury (which according to health assessments or other health studies under section 104(i), is associated with exposure to a hazardous substance in a release in the geographical area). Such a policy shall be subject to an annual deductible of $500, with no copayment requirement or annual or lifetime limitation on expenditures other than those referred to in paragraph (3).

(D) Such policies provided under subparagraphs (B) and (C) shall be secondary to, and provide for nonduplication of benefits with, any other policy or coverage, public or private, for which such individual is eligible. The benefits or coverage of such other policy shall be those determined to be in force as of thirty days prior to the date the State applies for area designation.

(E) Assistance under this subsection shall be provided on the condition that the costs thereof in connection with any individual pursuing a claim against a potentially responsible party shall be repaid to the Fund out of the proceeds of any award (including punitive damages) or settlement of such claim.

(6)(A) The President, with the assistance of the Agency for Toxic Substances and Disease Registry, beginning January 1, 1987, shall submit annual reports to the Congress on the implementation and effectiveness of this victim assistance demonstration program, including an evaluation of the effectiveness of each of the State programs established under the subsection. The final report shall also address the relationship of this demonstration program to other public and private mechanisms that may exist to carry out the same or similar functions.

(B) Each State selected to operate a demonstration program under this subsection shall submit to the President and the Congress, not later than January 1, 1990, a report on the implementation and effectiveness of its program.

(n) For fiscal year 1986 and for each fiscal year thereafter, not less than 5 per centum of all sums appropriated from the Trust Fund or $50,000,000, whichever is less, shall be directly available to the Agency for Toxic Substances and Disease Registry and used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i), including any such activities related to hazardous waste stored, treated, or disposed of at a facility having a permit under section 3005 of the Solid Waste Disposal Act. Any funds so made available which are not committed by the beginning of the fourth quarter of the fiscal year in which made available shall be made available in the Trust Fund for other purposes.

* * * * * * *

CLAIMS PROCEDURE

SEC. 112. (a) * * *

* * * * * * *

[(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.]

[(e)] *(d)* Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURISDICTION AND VENUE

[Sec. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.]

Sec. 113. (a)(1) Review of any regulation promulgated under this Act may be had upon application by any interested person in the Circuit Court of Appeals of the United States for the District of Columbia or in any United States court of appeals for a circuit in which the applicant resides or transacts business which is directly affected by such regulation. Any such application shall be made within one hundred and twenty days from the date of promulgation of such regulation, or after such date only if such application is based solely on grounds which arose after such one hundred and twentieth day. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

"(2)(A) If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of the first such application more than thirty days before receiving written notice of the filing of the second application, then the record shall be filed in that court in which the first application was filed. If applications for review of the same agency action have been filed in two or more United States courts of appeals and the President has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the President shall promptly advise in writing the

Administrative Office of the United States courts that applications have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the President, the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the President. Upon notification of such selection, the President shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the President, the record shall be filed in the United States court of appeals which remanded such action.

(B) Where applications have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which an application with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such application to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.

(b) Except as provided in [subsection] *subsections* (a) *and (f)* of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(e)(1) No claim may be presented, nor may any action be commenced under this title—

(A) for the cost of response, unless that claim is presented or action commenced within six years after the date of completion of the response action: Provided, however, That within the limitation period set out herein a State or the United States may commence an action under this title for recovery of any cost or costs at any time after such cost or costs have been incurred;

(B) for damages under subparagraph (C) of section 107(a), unless that claim is presented or action commenced within six years after the date on which final regulations are promulgated under section 301(c) or within three years after the date of the discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later; or

(C) for any other damages, unless that claim is presented or action commenced within three years after the date of discovery of the loss and its connection with the release in question or the date of enactment of this Act, whichever is later: Provided, however, That the time limitations contained in this paragraph shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him nor against an Indian tribe until the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this subsection. No claim may be presented or action be commenced under this subparagraph for any damages, if prior to the date of enactment of the Superfund Improvement Act of 1985, the statute of limitations which would otherwise apply under this paragraph has expired.

(2) No action for contribution may be commenced under section 107 more than three years after the date of entry of judgment or the date of the good-faith settlement.

(3) No action based on rights subrogated pursuant to section 112 by reason of payment of a claim may be commenced under this title more than three years after the date of payment of such claim.

(f) No court shall have jurisdiction to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a), in any action other than (1) an action under section 107 to recover response costs or damages or for contribution or indemnification; (2) an action to enforce an order issued under sections 104 or 106(a) or to recover a penalty for violation of such order; or (3) an action for reimbursement under section 106(b)(2).

(g) In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. The only objection which may be raised in any such judicial action under section 106 or 107 is an objection to the response action which was raised with reasonable specificity to the President during the applicable period for public comment. In considering such objections, the court shall uphold the President's decision in selecting the response action unless the decision was arbitrary and capricious or otherwise not in accordance with law. If the court finds that the President's decision in selecting the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan. In reviewing alleged procedural errors, the

court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(h) In any action by the United States under section 104, 106, or 107, process may be served in any district where the defendant is found, or resides, or transacts business, or has appointed an agent for the service of process.

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RELATIONSHIP TO OTHER LAW

SEC. 114. (a) * * *

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[(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.]

[(d)] *(c)* Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title[.] *: Provided, That with respect to a Federal facility or activity for which such duties or powers are delegated to an officer, employee or representative of the department, agency or instrumentality which owns or operates such facility or conducts such activity, the concurrence of the Administrator (and the responsible State official where a cooperative agreement has been entered into) shall be required for the selection of appropriate remedial action and the administrative order authorities of section 106(a) are hereby delegated to the Administrator.*

INDIAN TRIBES

Sec. 116. The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding cooperation in establishing and maintaining national registries), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).

FEDERAL FACILITIES

Sec. 117. (a) Federal Agency Hazardous Waste Compliance Docket.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket which shall contain all information submitted under section 3016 of the Solid Waste Disposal Act regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility. Such docket shall be available for public inspection at reasonable times. Three months after establishment of the docket and every three months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding three-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

(b) Assessment and Evaluation.—Not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility for which information is required under section 3016 of the Solid Waste Disposal Act. Following such preliminary assessment, the Administrator shall where appropriate—

(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases.

(2) include such facilities on the National Priorities List maintained under such plan. Such evaluation and listing shall be completed not later than twenty months after such date of enactment.

(c) RIFS and Interagency Agreement.—

(1) RIFS.—Within one year after the inclusion of any facility on the National Priority List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for such facility.

(2) Interagency agreement.—(A) Within six months after completion of each such remedial investigation and feasibility study, the Administrator shall review the results of such inves-

tigation and study and shall enter into an interagency agreement with the head of the department, agency, or instrumentality concerned for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. All such intergency agreements shall comply with the public participation requirements of section 104(j). Such agreement shall require that substantial continuous physical onsite remedial action is commenced at each facility which is the subject of such an agreement within twelve months after the agreement is entered into.

(B) Each interagency agreement under this paragraph shall include, but shall not be limited to—

(i) a review of alternative remedial actions and selection of construction design by the Administrator;

(ii) a schedule for the completion of each such remedial action; and

(iii) arrangements for long term operation and maintenance of the facility.

(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable from the date the interagency agreement was entered into. Each agency shall include in its annual budget submissions to the Congress a request for funding adequate to complete remedial action, and a review of alternative agency funding which could be used to provide for the costs of remedial action. The request shall also include a statement of the hazard posed by the facility to human health, welfare and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to—

(A) a report on the progress in reaching interagency agreements under this section;

(B) the specific cost estimates and budgetary proposals involved in each interagency agreement;

(C) a brief summary of the public comments regarding each proposed interagency agreement; and

(D) a description of the instances in which no agreement was reached.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached.

(d) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by Executive order of the President or otherwise, to any other office or employee of the United States or to any other person.

(e) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priority List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned and operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities, except for any requirements relating to bonding, insurance, or financial responsibility. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

CITIZEN SUITS

SEC. 118. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on such person's behalf—

(1) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution, who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

(2) against the President for failure to perform any act or duty under this Act which is not discretionary with the President.

Any action under this subsection shall be brought in the district court for the district in which the alleged violation occurred. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such requirement, to order the President to perform such act or duty, as the case may be, or to order such person in violation, of any standard, regulation, condition, requirement, or order to take such action as may be necessary to correct the violation or to apply appropriate civil penalties under this Act: Provided, however, That no district court shall have jurisdiction under this section to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a).

(b) No action may be commenced under subsection (a) of this section (1) prior to ninety days after the plaintiff has given notice of the violation or disposal (A) to the President; or (B) to the State in which the alleged violation or disposal occurs; and (C) to any alleged violator of a standard, regulation, condition, requirement, or order; or (2) if the President or State has commenced and is diligently prosecuting an action under this Act or the Solid Waste Disposal Act to require compliance with such standard, regulation, condition, requirement, or order.

(c) In any action commenced by the President or a State, under this Act or under the Solid Waste Disposal Act, in a court of the

United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and such applicant is so situated that the disposition of the action may, as a practical matter, impair or impede such applicant's ability to protect that interest, unless the President or the State shows that the applicant's interest is adequately represented by existing parties.

(d) In any action under this section, the United States or the State may intervene as a matter of right.

(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the President or a State agency).

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

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SUBTITLE A—IMPOSITION OF TAXES ON PETROLEUM AND CERTAIN CHEMICALS

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"SUBCHAPTER B—TAX ON CERTAIN CHEMICALS

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"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

* * * * * * *

"(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

"(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED SUBSTANCE.—For purposes of this section, the term 'qualified substance' means any substance—

"(i) used in a qualified use by the manufacturer, producer, or importer,

"(ii) sold for use by the purchaser in a qualified use, or

"(iii) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(C) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(5) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, phosphoric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

* * * * * * *

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance, or sells such substance for use, as a qualified substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(3) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, phosphoric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(5), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.".

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SUBTITLE B—ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Response Trust Fund" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund. [as provided in this section]

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(8) of this Act.

[(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

[(A) 1981, $44,000,000,

[(B) 1982, $44,000,000,

[(C) 1983, $44,000,000,

[(D) 1984, $44,000,000, and

[(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

[(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

[(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

[(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.]

[(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

[(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) LIMITATIONS ON EXPENDITURES.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) and (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).]

* * * * * * *

EXPIRATION, SUNSET PROVISION

[SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.]

AUTHORIZATION OF APPROPRIATIONS

Sec. 303. (a) The authority to collect taxes under chapter 38 of the Internal Revenue Code of 1954, together with the sums authorized to be appropriated under subsection (b), shall total $7,500,000,000 during the five-fiscal-year period beginning October 1, 1985.

(b) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund for fiscal year—

(A) 1981, $44,000,000,
(B) 1982, $44,000,000,
(C) 1983, $44,000,000,
(D) 1984, $44,000,000,
(E) 1985, $44,000,000,
(F) 1986, $206,000,000,
(G) 1987, $206,000,000,
(H) 1988, $206,000,000,
(I) 1989, $206,000,000, and
(J) 1990, $206,000,000.

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A) through (I) as has not been appropriated before the beginning of the fiscal year involved.".

(b) Transfer of Funds.—There shall be transferred to the Response Trust Fund—

(1) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

(2) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

(c) Expenditures From Response Trust Fund.—

(1) In general.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof of this Act) as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—

(A) response costs,

(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

(C) claims for injury to, or destruction or loss of, natural resources, and

(D) related costs described in section 111(c) of this Act.

(2) Limitations on expenditures.—At least 85 per centum of the amounts appropriated to the Response Trust Fund shall be reserved—

(A) for the purposes specifed in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

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